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# TERMS AND CONDITIONS OF SALE

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**GENERAL CONDITIONS OF SALE AND DELIVERY – sourced from the Vereniging  
Kunststof Composieten Nederland**

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## Chapter 1: Definitions and applicability

### Article 1:

- 1.1 AV: general conditions of sale and delivery of the Vereniging Kunststof Composieten Nederland (VKCN).
- 1.2 Agreement: any purchase, sales and/or building order/instruction or similar agreement entered into by the supplier with the other party and all agreements and/or commitments arising from that and/or connected to that.
- 1.3 Offer: any offer and/or quotation made by the supplier to a(n) (potential) other party.
- 1.4 Supplier: any company that is a member of the VKCN, which applies these AV as such and acts as vendor, supplier and/or contractor in the event of agreements, and as offeree in the events of offers.
- 1.5 Other party: any natural or legal entity that enters into an agreement with a supplier as described in paragraph 1.2 or that receives an offer from the supplier as described in paragraph 1.3.
- 1.6 Days: all calendar days.
- 1.7 Complaints: all complaints from the other party about the quality or quantity of the goods delivered.
- 1.8 Ex works: the corporate buildings and/or corporate sites of the supplier and/or other locations where the supplier separates the goods to be delivered and prepares them for dispatch.

### Article 2:

- 2.1 These AV apply to all offers, quotations, concluded agreements pertaining to the execution of work undertaken by VKCN members, and the performances arising from that, including deliveries, also if they pertain to the provision of services, execution of work or availability of goods, insofar as the supplier has declared these conditions applicable and insofar as the parties have not explicitly deviated from these conditions in writing.
- 2.2 The applicability of any purchase or other conditions of the other party are hereby explicitly rejected, unless the supplier has explicitly told the other party in writing that the supplier consents to the applicability of those other terms and conditions. This consent shall never mean that the terms and conditions of the other party also apply to other agreements between the supplier and the other party.
- 2.3 Provisions in these AV do not apply if and insofar as mandatory legal provisions dictate otherwise. If one or more provisions in these AV are fully or partially void the other provisions shall remain in full force. In that case, the supplier and other party shall consult to find a solution in the spirit of these AV.
- 2.4 The fact that the supplier does not require strict compliance with these AV at all times, does not automatically mean that the provisions detailed therein no longer apply, or that the supplier would lose the right to require strict compliance with these AV in other cases.

## Chapter 2: Conclusion, offers and quotations, compensation of costs

### Article 3:

- 3.1 Unless otherwise agreed upon in writing, all offers and quotations from the supplier are without prejudice and subject to contract at all times. If no other term is stipulated in the quotation, the quotation is valid for 14 days. A quotation or offer lapses if the product or service which the quotation relates to is no longer available.
- 3.2 The supplier is not obliged to abide by his quotation or offer, if it is reasonably understandable for the other party that the quotation or offer, or parts thereof, contain an apparent error or mistake.
- 3.3 An agreement is concluded the moment the supplier sends a written confirmation of instruction to the other party.

3.4 If the agreement is not concluded following a requested quotation, the costs incurred by the supplier in order to issue the quotation and the costs of any samples supplied can be charged, as long as this was stipulated before the quotation was issued. The extent shall be calculated according to custom and fairness.

3.5 All information in the offer or quotation may be used by the other party only within the framework of the instruction (to be) given. If the offer is not accepted, the other party is obliged to return the documents relating to the offer to the supplier with immediate effect following a request to that end by the supplier.

3.6 If it emerges that the information provided by the other party for the request or agreement was incorrect, the supplier is entitled to adjust the prices accordingly. The other party is entitled to finalize or change the offer within 48 hours of the price adjustment being announced, subject to the other party's obligation to pay the costs already incurred by the supplier, such as yet not limited to the costs incurred by the supplier to issue the quotation and the costs of any samples supplied. All this shall be calculated according to custom and fairness.

## Chapter 3: Order/instruction, prices and dissolution

### Article 4:

4.1 Changes to an agreement can only be made following the written consent of the supplier.

4.2 If after accepting an order/instruction or sale by the supplier, circumstances arise which affect the cost price, such as changes to the prices of raw materials or the goods to be delivered, salaries, exchange rates, import duties, etc., the supplier reserves the right to pass those price changes on to the other party. The other party shall be notified of that.

4.3 If, after accepting the order/ instruction, the other party announces changes which the supplier does not agree with, as a result of which the supplier cancels the order or the other party fully or partially cancels the order, all costs already incurred as well as the amount of lost profits and underutilization losses shall be payable by the other party.

4.4 If after commencement of the manufacturing process it emerges that the supplier cannot reasonably manufacture the goods in accordance with the manufacturing method referred to in the sample, drawing or model at the price agreed upon with the supplier, the parties shall consult each other about changing the instruction and/or the price and/or the delivery date. If the parties cannot in all reasonableness reach an agreement, either party can terminate the agreement. The other party shall pay the supplier for any costs incurred so far, including material costs, production costs and labour costs. The supplier shall provide the other party with the products, samples or semi-finished products already manufactured, as well as the materials purchased by the supplier and paid for by the other party, plus the materials, products, samples, etc. supplied by the other party.

4.5 Cancellation is possible only after having received the written consent of the supplier. Upon cancellation by the other party, it is obliged to pay all costs already incurred by the supplier, as well as lost profits and underutilization losses.

4.6 If there is a reasonable suspicion that the financial situation of the other party gives rise thereto, the supplier is entitled to ask the other party for security of payment of the costs (to be) incurred by the supplier for the other party, by providing the supplier with a bank guarantee or by paying the agreed amount ultimately payable.

4.7 The supplier is entitled to postpone execution of the work until the security has been given. If the request for security of payment is not complied with within three months thereof, the other party is in default, without any notice of default being required, and the supplier can dissolve the agreement without any legal intervention. In that case, the other party is liable for all costs, losses and lost profits arising from the

instruction and premature termination.

4.8 The supplier can call in third parties to execute this order/instruction.

## Article 5:

5.1 If the supplier and the other party have agreed a fixed price, the supplier is nevertheless entitled to increase this price at all times, without the other party being entitled to dissolve the agreement for that reason, if the increase arises from an authority or obligation pursuant to legislation, is caused by a rise in prices for raw materials, salaries etcetera, or is due to any other reason which could not reasonably be foreseen at the time the agreement was concluded.

5.2 All prices are exclusive of VAT, other taxes and levies, transport costs and the costs of insurance. All prices are ex warehouse or ex works, unless otherwise agreed upon. From the moment they leave the warehouse or works, the goods shall be at the expense and risk of the other party, who shall take out adequate insurance for that risk.

5.3 The prices are based on the cost-determining factors as they apply on the date the quotation for the supplier is made.

5.4 If, after 3 months of confirmation the prices of these cost-determining factors are increased - even if this increase is a result of foreseen circumstances at the time the quotation or confirmation is given - the supplier is entitled to increase the prices agreed upon accordingly, which price increase shall be binding for the other party, unless explicitly otherwise agreed upon.

5.5 All prices of imported goods are based on the day's rate of the currency of the country of origin. If the day's rate on the delivery date exceeds the rate on which the selling prices were initially based, the supplier is entitled to pass the price-increasing consequences of the changed rate on to the other party. If the agreed price increases by more than 10% as a result of that, the parties shall consult with each other about changing the instruction and/or the price and/or delivery date. If the parties cannot in all reasonableness reach an agreement, either party can terminate the agreement. The other party shall refund the supplier for any costs incurred so far, including material costs, production costs and labour costs. As soon as all payments have been made, the supplier shall provide the other party with the products, samples or semi-finished products already manufactured, as well as the materials purchased by the supplier and paid for by the other party, plus the materials, products, samples, etc. supplied by the other party.

5.6 All prices are ex works or ex warehouse. Unless otherwise agreed upon, the transport costs shall be payable by the other party at all times, even when the goods are transported to the address stipulated by the other party carriage paid, or when the goods are delivered by the supplier's delivery service.

5.7 The supplier is free to choose appropriate packaging and dispatch.

5.8 The supplier's reusable product packaging remains the property of the supplier. The other party shall keep this packaging available to the supplier. The other party is liable for damage or loss.

## Article 6:

6.1 The supplier is authorized to suspend fulfilment of the obligations or to dissolve the agreement with immediate effect, at the discretion of the supplier, if the other party fails to fulfil the obligations arising from the agreement or fails to do so in time or in full, and the supplier has declared the other party to be in default in writing and the term set in that notice has expired. In the event of dissolution, the other party is obliged to pay the supplier all losses, costs and loss of profits. The goods shall remain at the other party's risk until the outstanding payments have been made to the supplier. The obligation to compensate any damage and loss of profits does not apply if the supplier has dissolved the agreement by virtue of the provisions in article 12 due to the non-attributable failure on the part of the supplier.

6.2 If the other party files for a (temporary) moratorium, if the other party is put into liquidation, or if its

business has closed down or liquidated, all agreements concluded with the other party shall terminate with immediate effect, unless the supplier informs the other party within a reasonable term to demand full or partial fulfilment of the agreement in question by the other party, in which case the supplier is entitled to suspend his obligations arising from the agreement in question until fulfilment by the other party has been sufficiently secured, all this without prejudice to the supplier's other rights.

## Chapter 4: Provisions regarding the product

### Article 7:

7.1 Parts to be made available to the supplier by or on behalf of the other party, which parts must be fitted to or incorporated in the product to be manufactured by the supplier, must be delivered to the supplier's factory carriage paid, in the required quantities and without charging costs.

7.2 The other party is liable for the parts or other goods made available to the supplier and for the correct applicability thereof.

7.3 Without carrying out any checks, the supplier assumes that these parts etc. can be applied to, fitted on or incorporated in the product to be manufactured without delay, barring other provisions agreed upon in writing.

7.4 By the mere issue of these parts by or on behalf of the other party, the supplier is indemnified from carrying out any check into the applicability of those parts to, on or in the product to be manufactured by the supplier.

7.5 When the parts to be supplied by the other party are damaged or lost during the production process, the other party is obliged to provide the supplier with new parts on demand. The supplier is not obliged to pay any compensation other than the amount paid out by his insurance company, except in the case of intent or equal gross negligence on the part of the supplier.

7.6 If the parts referred to in paragraph 7.1 are supplied late or in insufficient quantities, or if the supplier cannot process them, which leads to a stagnation in production, the other party shall be liable for all losses suffered by the supplier as a result of this stagnation. Any delays as a result of this shall be at the expense of the other party.

7.7 The supplier shall take the product to be manufactured into production only when the other party approves of the sample series provided by the supplier, and the other party has notified the supplier of that fact in writing, or the supplier has confirmed that approval in writing.

## Chapter 5: Moulds

### Article 8:

8.1 If the supplier must manufacture a mould, form, auxiliary tools etc. the supplier shall not start the production process before the other party has paid the supplier the corresponding production costs.

8.2 Similarly, the supplier shall not start making changes, improvements or repairs to moulds, forms, auxiliary tools, etc. before the corresponding (estimated if necessary) costs have been paid.

8.3 If no price has been explicitly agreed upon for the work, the other party shall, on demand, pay the supplier an advance payment to be stipulated by the supplier.

8.4 Moulds manufactured by or fully or partially on the instructions of the supplier for which the other party has paid the agreed costs, shall become the property of the other party when the supplier has taken them into use for the production of the product.

8.5 However, the supplier shall keep the moulds if they are not used for production and they shall not

have to be returned to the other party - upon his written request - before the other party has paid all that he owes the supplier.

8.6 The other party is obliged to collect the moulds from the supplier within 3 years of the last delivery being made. If it fails to do so, the supplier shall set a term in writing within which the goods can be collected. If the other party fails to respond promptly, the supplier can destroy the moulds without the supplier being obliged to pay the other party any compensation for that. The other party is obliged to pay the costs incurred by the supplier on account of the aforementioned destruction.

8.7 In situations where the mould is supplied by the other party, they shall be returned at its request, but not before all claims from the supplier, of whatever nature, have been paid.

8.8 The supplier shall not be liable for lost, missing or damaged moulds, except in the case of gross negligence or intent on the part of the supplier. In the event of gross negligence and/or intent on the part of auxiliary persons (not being the supplier's subordinates) in the aforementioned situations, liability is excluded insofar as it is not covered by the supplier's insurance. If the supplier is liable in the situations referred to in this article, compensation shall be limited to the repair or replacement of the mould, at the discretion of the supplier.

8.9 Insofar as the supplier indicated on the offer or order confirmation for how many strokes or products a mould can generally be used, the mould is expected not to be suitable for further production after that number or after the production of those numbers. If such information was not given in the quotation or order confirmation, the supplier shall notify the other party thereof as soon as the supplier feels that a mould, etc. is no longer suitable for economically sound production. In that case, he shall also be given the costs relating to the repair or replacement. If the other party does not agree with the repair or replacement, the supplier can cancel the instruction without being obliged to pay any compensation.

8.10 Upon assessment of economically sound production, the advancing of technology and the company's adjustment to that are also taken into account, both in terms of volume and labour intensiveness. As long as a mould, etc. is suitable for production in accordance with the aforementioned standards and is kept by the supplier, the maintenance costs for regular repeat orders for products to be manufactured by means of that shall be payable by the supplier for a two-year period following their first use.

## Chapter 6: Delivery and delivery date

### Article 9:

9.1 Unless another form of delivery has been agreed upon, delivery is made on account of the supplier separating the goods in his warehouse, preparing them for dispatch and notifying the other party of this in writing.

9.2 The supplier and the other party shall agree the conditions of delivery, e.g. 'ex workshop', 'free on vehicle', 'ex works', or 'delivered at works'.

9.3 Upon delivery, the risks transfer from the supplier to the other party.

9.4 The supplier can choose the means of transport.

9.5 The supplier can stipulate cash on delivery.

9.6 The supplier has a tolerance of  $\pm 10\%$  with regard to the quantity of goods to be delivered. The other party can derive rights from deviations in thickness, dimensions or gram weights only when those factors form an essential element of the agreement and are of vital importance to the practicability of the object ordered from the supplier which they should be used for according to common opinion, and only if this has been recorded in writing in advance. The other party shall accept colour deviations insofar as that colour deviation does not exceed the shades within the colour stated by the other party.



- 9.7 In the case of delivery 'ex workshop', delivery is deemed to have taken place before the goods are loaded onto the vehicle.
- 9.8 In the case of delivery 'free on vehicle', delivery is deemed to have taken place the moment the goods are loaded onto the vehicle.
- 9.9 In the case of delivery 'delivered at works', delivery is deemed to have taken place when the work is finished; the supplier shall notify the other party thereof in writing.
- 9.10 In the case of delivery 'ex works', delivery is deemed to have taken place upon receipt before the goods are unloaded at the agreed destination, provided it is reasonably accessible to the vehicle used. When the destination is not reasonably accessible, the supplier can designate a delivery location, while notifying the other party in writing at the same time.
- 9.11 If goods to be delivered by the supplier cannot be transported to their destination as a result of circumstances beyond the supplier's control, the supplier shall store those goods at the expense and risk of the other party.
- 9.12 The supplier is authorised to make partial deliveries, which can be invoiced separately pro rata. If and insofar the other party fails to pay a partial delivery and/or if the other party fails to fulfil other obligations arising from the agreement in question or (an) earlier agreement(s), the supplier is not obliged to make a further partial delivery and the supplier is entitled to dissolve the agreement(s) insofar as not yet executed, without legal intervention and notice of default to the other party, reserving the right for compensation and without the other party being able to claim compensation or otherwise.
- 9.13 The supplier is authorised to retain the goods, and delivery is deemed to have taken place when neither the other party nor a representative appointed by him are present at the delivery location to take possession of the goods. The other party is obliged to pay the extra costs incurred by the supplier with regard to storage and other actions.
- 9.14 The other party is obliged to check the delivered goods for damage and/or faults within 3 working days of delivery, and to notify the supplier of any faults within three working days. After this term has expired, the other party is deemed to have approved of the delivered goods.
- 9.15 In the event that both the supplier and the other party detect any damage or faults to unprocessed goods in time, insofar as that damage or the fault arose before delivery, the supplier shall take back the damaged goods and shall arrange for them to be replaced, in accordance with agreements made. The other party's obligation to pay the purchase price is not affected.
- 9.16 The other party is entitled to compensation if the damage and/or faults can be attributed to the supplier. When the supplier is not able to arrange for a replacement, both parties are entitled to demand dissolution of the agreement. In that case, the other party is entitled to compensation when the non-fulfilment is the result of a fact that, according to law, can be attributed to the supplier and there is no instance of force majeure.

## Article 10:

- 10.1 Unless the supplier has guaranteed a certain delivery date explicitly and in writing, the delivery dates stated shall never be regarded as deadlines.
- 10.2 Every agreed delivery period commences on the day on which all details required for the execution of the work have been received by the supplier.
- 10.3 When the supplier himself must set measurements regarding the work or must check details regarding the work, the delivery period commences when the measurements or checks have been carried out and this has been reported to the other party. The supplier shall confirm the dimensions or checks regarding the work to the other party in writing.
- 10.4 In the event of a late delivery, the other party must declare the supplier in default, whereby the

supplier is given a reasonable term to comply. This paragraph does not apply in the event of a (non) permanent attributable failure on the part of the supplier, as described in article 12.

10.5 The supplier is not liable for the consequences of exceeding the deadline given. Exceeding the delivery date for whatever reason does not give the other party right to compensation, nor to non-fulfilment of any of his obligations in that respect. The other party can dissolve the agreement on the conditions that apply to cancellation, as outlined in article 6.

## Chapter 7: Delivery and delivery date

### Article 11:

11.1 All goods delivered to the other party by the supplier shall remain the property of the supplier until the other party has paid all the supplier's claims of whatever nature, plus interest and costs and all other claims the supplier has in connection with the other party's failure to fulfil these agreements.

11.2 Should the other party form a new good from goods delivered by the supplier which are subject to retention of title, the other party shall act on the instructions of the supplier when doing so and it shall hold it in safekeeping for the supplier, while the newly formed good is deemed to be subject to a retention of title in favour of the supplier. Ownership shall only pass to the other party the moment the retention of title is lifted through the payment of all the supplier's claims.

11.3 Insofar as the supplier would have any claims vis-à-vis the other party other than those referred to in paragraph 11.1 and the supplier has delivered goods to the other party that are not subject to retention of title, the other party shall create, as security for the fulfilment of its obligations, a non-possessory lien on these goods in favour of the supplier, while the supplier shall accept this non-possessory lien. On the supplier's demand, the other party shall sign a pledge establishment deed. The other party shall guarantee that it is entitled to pledge the goods and that the goods are free of any pledge and/or other restricted rights, other than the supplier's rights.

11.4 The other party shall be entitled to resell or process all goods purchased from the supplier, provided this is done within the scope of ordinary business operations.

11.5 If the other party sells the goods, the supplier can force the other party to establish an undisclosed pledge in favour of the supplier on his claim - arising from that sale - against the purchaser.

11.6 The other party shall administer the goods referred to in this section with due diligence. The other party shall insure the goods against all calamities on the basis of the invoice value. The other party shall provide the supplier with names and addresses of the insurance companies and copies of the policies on the supplier's demand. Furthermore, on the supplier's demand, the other party shall establish, insofar as this has not arisen legally already, an undisclosed pledge on insurance-related claims in favour of the supplier.

11.7 Subject to the provisions of paragraph 11.4, the other party is not entitled to pledge the goods referred to in this article to third parties or renounce, transfer or restrict, at the supplier's expense, the legal or actual control thereof in any way whatsoever.

11.8 The supplier remains the owner of the goods delivered to the other party by the supplier, also after delivery, wherever these goods are located. The other party is deemed to keep the goods for the supplier as long as the other party has not fulfilled all of its payment obligations, by virtue of whatever agreement, towards the supplier.

11.9 As long as no full payment has been made, the goods cannot serve as security for debts to third parties, in whatever way.

11.10 In the event of non-payment of any payable amount, or in the event that the other party fails - vis-à-vis the supplier - to fulfil any obligation arising from any agreement concluded with the supplier in respect of

execution of the work or selling of the goods, or in the event of a request for moratorium, winding up or liquidation of the commissioning party, the supplier is entitled to cancel the agreement or the part thereof not yet executed by the supplier as well as any other existing agreement(s) concluded with the other party, with immediate effect, without legal intervention being required, by means of a registered letter addressed to the other party.

11.11 With the aforementioned cancellation, the other party declares in advance to agree, in which case the other party hereby grants the supplier access to its sites and the buildings erected on it, and the supplier is entitled to take back any goods delivered but not paid for, without prejudice to the supplier's right to compensation for losses, costs, interest and lost profits, which may arise as a result of the actions of another party.

11.12 The other party is obliged to promptly notify the supplier when third parties lay claim to goods which by virtue of this article are subject to the supplier's retention of title.

## Chapter 8: Force majeure and security

### Article 12:

12.1 If the supplier cannot fulfil his obligations as a result of a non-attributable failure on his part, the supplier is entitled: - to suspend delivery, either for a reasonable term to be stipulated by the supplier, - or to dissolve the agreement either following expiry of the stated, reasonable deadline, or immediately if the non-attributable failure is permanent, without legal intervention, by means of a written and reasoned explanation, without the supplier being obliged to pay the other party any compensation, including compensation of any benefit derived.

12.2 Non-attributable failure, such as referred to in paragraph 12.1, shall include, amongst other things: war, imminent war, epidemics, revolt, electricity, fire, smoke and/or water damage, floods, manufacturing breakdowns, strikes, blockades, lockouts, traffic disruptions, disruptions in the supply of raw materials/semi-finished products, illness among staff, the suppliers'/contractors' failure to fulfil their obligations or failure to do so in time, other stagnations, both in the supplier's business and the businesses of his suppliers and auxiliary persons, as well as such a shortage of raw and auxiliary materials as a result of price increases that the supplier cannot reasonably be expected to deliver, even at a higher price.

12.3 If this concerns a partial execution, the other party shall owe the costs incurred by the supplier and/or a proportional part of the total price, this of course on delivery of the goods manufactured by the supplier.

12.4 The supplier is not liable for direct or indirect losses of whatever nature suffered by the other party or third parties following suspension or cancellation as a result of the aforementioned force majeure.

## Chapter 9: Industrial property, copyright and reproduction rights

### Article 13:

13.1 The copyright, industrial property rights, as well as the reproduction rights to designs, drafts, drawings, schedules, samples, models, forms, calculations, computer simulations, software, specifications, moulds, auxiliary materials etc. designed or created by us shall remain fully vested in the supplier, also when the other party places an order with the supplier in that respect, unless otherwise agreed upon in writing.

13.2 Without the written consent of the supplier, the other party is not permitted to disclose designs, drafts, drawings, schedules, samples, models, forms, calculations, computer simulations, software, specifications, moulds, auxiliary materials etc. to third parties or make these available to third parties, unless the other party is obliged to do so by virtue of the law. Vis-à-vis the supplier the other party is liable for losses

that are the result of third parties having seen or obtained the aforementioned designs, drafts, drawings etc.

13.3 If the supplier manufactures products on the basis of drawings, samples, models or other instructions, in the widest sense of the word, provided by the other party or through the other party from third parties, the other party guarantees that the production and/or delivery of those products shall not infringe any patents or user rights, trade models or any other third-party rights and the other party indemnifies the supplier against all claims arising from that.

13.4 If a third party objects to the production and/or delivery by virtue of any alleged right as referred to above, the supplier is on that basis unreservedly and exclusively entitled to stop production and/or delivery and to demand that the other party compensates the costs incurred, without prejudice to the supplier's claims to any other compensation and without the supplier being obliged to pay the other party any compensation.

13.5 The supplier is obliged to promptly notify the other party when third parties object to the production and/or delivery of the goods intended for the other party. 13.6 The other party is liable for losses caused by an infringement of the supplier's intellectual property rights, committed by means of the goods delivered to the other party by the supplier.

13.7 The other party is obliged to promptly notify the supplier as soon as the other party discovers any infringement of the supplier's rights.

13.8 If an order for a design, draft, drawing, schedule, sample, model, form, calculation, computer simulation, software, specifications, mould or auxiliary materials etc. from the supplier is not followed up by a final order, the supplier shall invoice this work after thirty days, while all copyrights, model rights, reproduction rights or any other industrial property rights remain fully vested in the supplier.

## Chapter 10: Guarantee and quality

### Article 14:

14.1 With due observance of the other provisions in these AV, in the case of products manufactured by or on behalf of the supplier, the supplier guarantees both the quality of the products supplied by the supplier and the quality of the materials used and/or built for that purpose, insofar as the quality of the specification for specified products has been defined in advance.

14.2 In the case of the delivery, within the framework of trade, of complete products manufactured by third parties, the supplier only guarantees that the delivered product meet the agreements made between the parties in writing in terms of specification and materials.

14.3 Faults to delivered goods, including moulds and products manufactured on the basis of that, with regard to which the other party - within three months, counting from the day of dispatch - can prove that the faults have arisen solely or mainly as a result of an error in the construction designed by the supplier or as a result of poor finishing or the use of poor materials, shall be rectified by the supplier. The supplier is not obliged to pay any further compensation of direct or indirect losses suffered by the other party or any third party.

14.4 As soon as the goods are delivered, the other party shall count, measure, weigh and inspect the goods for visible and invisible, but easily detectable faults, prior to storing or using the goods. Once they are used, the goods are considered to comply with the agreement, unless the good would prove to have an invisible fault that is not easy to detect.

14.5 Goods can only be returned to the supplier after the supplier has agreed in writing to their return and the shipping method. The goods shall remain at the other party's risk.

14.6 Products and parts replaced by the supplier with new ones shall become the property of the supplier as a result of that.

**Article 15:**

15.1 The supplier gives the other party only those guarantees listed in the supplier's offer. The objects delivered and/or installed or assembled by the supplier are of average trade quality and have the properties and qualities laid down in the documentation issued by the supplier as applicable at the time the agreement is concluded, unless the supplier has promised a specific guarantee in writing.

15.2 Guarantees given by the supplier shall not apply:

- a) In the event of improper use by the other party and/or third parties of the goods delivered, installed and/or assembled by the supplier;
- b) In the event of damage caused by facts and/or circumstances not relating to the good quality of the material, or the way in which the supplier's goods are manufactured, installed or assembled;
- c) In the event of failure to strictly observe all user or guarantee instructions, or if the other party and/or third parties have changed or repaired the goods delivered, installed or assembled by the supplier;
- d) If the other party fails to (promptly or properly) fulfil any obligation vis-à-vis the supplier, of whatever nature.

15.3 The use of moulds manufactured by the supplier at his company is subject to a two-year guarantee period, or the quantity of products to be manufactured strictly agreed upon. The aforementioned guarantee given by the supplier shall not apply:

- a) To faults caused by the defectiveness of materials and/or parts made available or prescribed by the other party;
- b) To faults caused by improper use or neglect by/on the part of the other party or its staff;
- c) To faults caused by normal wear and tear, improper use, extraordinary exertions or the use of unsuitable machinery and equipment and corrosive chemicals;
- d) To a change to the moulds, effectuated by third parties outside this instruction.

**Chapter 11: Liability risk / product liability risk****Article 16:**

16.1 If the supplier is liable for any direct losses, the liability of the supplier shall be limited to no more than twice the value of the order's invoice value, or at least to that part of the order which the liability relates to. The liability of the supplier shall be limited to the sum paid by his insurer in the relevant case, at all times. The supplier is not liable for direct losses suffered by third parties or indirect losses, consequential losses, trading losses, emotional injury, or losses caused by subordinates, auxiliary persons and/or subcontractors, which losses are suffered by the other party or third parties.

16.2 If the other party sells goods delivered by the supplier, or if it uses goods (co-)delivered by the supplier to form new goods and sells them on, it is obliged to take out adequate insurance against the product liability risk of article 6:185 of the Netherlands Civil Code. On the supplier's demand, the other party shall forward the supplier a copy of the insurance policy in question. The parties agree that the other party is a manufacturer within the meaning of article 6:185 of the Netherlands Civil Code.

16.3 The other party indemnifies the supplier against all third-party claims against the supplier, brought by virtue of, yet not limited to article 6:185 of the Netherlands Civil Code.

16.4 The supplier is at all times authorised to allege the liability-restricting stipulations imposed on the supplier by his advisors, suppliers or manufacturers of raw materials against the other party, so that the obligations arising from guarantee and liability shall never cover more than that which the supplier has bound himself to towards his advisors, suppliers or manufacturers of raw materials.

16.5 With regard to goods that originate from the supplier and have been subsequently supplied to third parties by the other party, the latter undertakes to take out adequate business liability insurance.

#### Article 17:

17.1 The supplier cannot vouch for the practicability of the goods supplied by the supplier for a special purpose other than the one they should be used for according to common opinion.

17.2 Neither is the supplier liable for errors or unlawful acts on the part of his employees and those of other persons who are involved in the execution of the agreement concluded with the other party by or on behalf of the supplier, unless it concerns an error or unlawful act on the part of persons who can be regarded as bodies of the company or as a managing officer of the supplier, and the other party furthermore proves that it concerns intent or gross negligence on the part of the supplier.

17.3 Neither is the supplier liable for user advice given, unless the other party proves that it concerns intent or gross negligence on the part of the supplier.

17.4 The supplier is not liable for the consequences when the other party or third parties carry out repairs or maintenance without the knowledge of the supplier. Neither does the supplier accept liability when such work is carried out on the instructions or under the supervision of an expert who has been appointed by the other party or its client.

## Chapter 12: Complaints

#### Article 18:

18.1 Upon receipt, the other party must check whether products have been delivered in the correct quantity. Complaints about the quantity delivered must be submitted immediately after the other party could have reasonably checked the quantity, yet no later than eight working days after delivery of the products. Failing timely submission of a complaint, the quantity on the waybill, delivery note or similar signed document shall be deemed to have been accepted as correct by the other party.

18.2 All complaints about any incorrect execution of the orders or the quality of the products delivered must be submitted by registered letter within eight days of delivery.

18.3 Complaints regarding the supplier's invoices must also be submitted to the supplier by registered letter within eight days of the invoice date.

18.4 In the event of faults within the meaning of article 15, the other party must notify the supplier thereof by registered letter within 48 hours of having discovered the alleged fault.

18.5 When the aforementioned periods have expired, the other party is deemed to have fully approved of the delivered goods. The supplier is not obliged to handle complaints submitted outside the aforementioned periods.

18.6 If a complaint has been submitted in time and after it has been proved that the products have material or manufacturing faults, the supplier shall, at his discretion, either arrange for free repairs or a fully or partially free new delivery. In the case of delivery within the framework of the trade of complete products manufactured by third parties, the supplier shall, at his discretion, arrange for a fully or partially new delivery, or he shall take the delivered goods back, crediting the other party. The supplier has no other obligations, particularly an obligation to pay compensation. The supplier is only obliged to make deliveries in accordance with the specification agreed upon when placing the orders. The supplier therefore accepts no liability for the applicability of the delivered products for the purposes stated by the other party or those deviating from the specifications.

18.7 Complaints shall never suspend the obligation to pay.

18.8 Complaints are not handled when the other party has in any way failed to fulfil its obligations towards the supplier that have so far arisen from any agreement.

## Chapter 13: Payment

### Article 19:

19.1 Payments must be made within fifteen days of the invoice date, without any discount or setoff, unless the other party wishes to set off any liquid claims it has against the supplier by virtue of its legal right to do so and it has notified the supplier of that within 8 days of the date of the supplier's invoice.

19.2 Payments must be made by transfer to the supplier's office or into one of his bank or giro accounts, in the currency invoiced by the supplier, unless the supplier indicates to demand another payment method such as cash on delivery.

19.3 The payment date is the date on which the supplier's bank or giro account is credited or payment has been made in cash.

19.4 Payments shall be applied first in payment of payable costs, next in payment of interest and finally in payment of outstanding invoices in the order in which they were sent, even if the other party should indicate that its payment relates to other invoices and/or debts.

19.5 In the event that the other party is late in paying, as well as in the event of (a petition for) liquidation or moratorium, guardianship or administration order and liquidation, the other party shall be in default, without notice of default being required and it shall owe the supplier legal interest of 1.5% of the invoice amount for each month or part thereof by which the due date referred to in paragraph 19.1 is exceeded.

19.6 In the event that the other party is in default for more than fifteen days, the supplier shall be entitled to take action to recover the debt. In that case, the other party owes the supplier a penalty in accordance with the collection fee of the Netherlands Bar Association, subject to a minimum of € 250.

19.7 If the other party defaults on any payment obligation vis-à-vis the supplier, the other party is also in default as regards all claims the supplier may have against it. Paragraphs 19.4 and 19.5 shall apply accordingly.

19.8 In the event of paragraph 19.4, the execution of all instructions accepted for the other party shall be suspended until full payment has been made, or until a date to be set by the supplier. If this date is exceeded, the supplier is entitled not to carry out said instructions and to claim compensation.

19.9 The supplier is at all times entitled to demand further security from the other party with regard to payment. If the request for security of payment is not complied with within eight days thereof, the other party is in default, without any notice of default being required, and the instruction can be regarded as having been terminated. The other party is liable for all costs and losses of the supplier arising from the instruction and premature termination.

19.10 The supplier is entitled to demand that the other party signs a deed of assignment to transfer his claim(s) against its client, which the other party shall comply with if so demanded by the supplier, such to secure payment of the other party's debt(s) to the supplier.

19.11 If the other party defaults on the payment of one of the claims the supplier has against the other party, all the other claims, including future instalments, shall - without prejudice to the supplier's other rights - become immediately due and payable, also when it was agreed with the supplier that delivery and payment are to take place in instalments.

## Chapter 14: Payment

### Article 20:

20.1 These AV, the agreement concluded by the supplier and the other party and/or the commitments arising from that, as well as the execution thereof, are governed by the laws of the Netherlands, with the exception of the provisions of the Vienna Sales Convention and potential future international regulations in the field of acquiring movable and physical goods, the force of which can be excluded by the parties.

20.2 The parties shall together appoint an NMI certified mediator if they have a dispute in respect of the agreement and/or any commitments arising from that.

20.3 If the mediation referred to in paragraph 20.1 does not lead to a (complete) solution of the disputes between the parties, or if the parties fail to agree on the appointment of a joint mediator by virtue of paragraph 20.2, either party is entitled to submit the dispute to the courts. The court in the district of the supplier's place of business has jurisdiction to hear the (remainder of the) dispute.

20.4 If one party raises a dispute while the other party has not fulfilled all of its payment obligations (yet), this dispute can be submitted to the court only after the other party has fulfilled its entire payment obligation or has issued a bank guarantee, while the supplier in that case, at his discretion, can ask the competent court for an enforceable order.

20.5 As regards the amounts of money involved in mutual obligations arising from agreements entered into with the supplier, the supplier's accounting records shall be decisive – subject to proof to the contrary with every possible means.

20.6 Subject to proof to the contrary with every possible means, the quantities, sizes and weights mentioned on the invoice, waybill and/or packing slip shall be valid as correct between the other party and the supplier.

## Chapter 14: General / Changes / Effective date

### Article 21:

21.1 The headings of the individual articles of these AV only serve to improve readability. The contents and purport of the article contained under a certain header are therefore not limited to that term or heading.

### Article 22:

22.1 The nullity or avoidance of part of the AV shall not lead to the nullity or avoidance of all parts of these AV. In the event of nullity/avoidance of any provision, the interpretation that is most favourable to the supplier shall apply.

### Article 23:

23.1 The supplier is authorized to change these AV. The changes shall take effect immediately. The other party, known by the supplier when the change is made, shall notify the supplier of the change in writing.

### Article 24:

24.1 All agreements concluded with us or any commitments arising from that are governed by the laws of the Netherlands and Dutch private international law, with the exclusion of the Vienna Sales Convention of 1980.

24.2 These AV were filed with the Chamber of Commerce and Industry in The Hague and registered under number 27179488 and shall take effect as from 2008.