

## GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND SERVICE

Filed by Import en Groothandel van Ommen B.V. on the 28<sup>th</sup> of October 2021 at  
Chamber of Commerce Apeldoorn with ref. 08038449

### **ARTICLE 1. General**

1.1 In these terms and conditions, the following meanings shall apply: “Customer”: the other party to the Supplier involved in one or more of the (legal) acts mentioned in the subsequent paragraph or at whom a (legal) act mentioned in that paragraph is aimed; “Supplier”: the user of these Terms and Conditions”; “Terms and Conditions”: these terms and conditions of sale, delivery and service. Where the “Supplier” is mentioned, this refers to Van Ommen B.V.

1.2 These Terms and Conditions apply – in the broadest sense – to all offers, quotations, advice, orders, confirmations of order or instructions and agreements of the Supplier to supply products (including machinery, tools, software and hardware, capital goods and consumables and parts) and services (including, but not limited to, development, siting, installation, servicing, maintenance and repair works);

1.3 Terms and conditions of the Customer shall not apply. The Customer may rely on clauses deviating from these Terms and Conditions only insofar as these are explicitly accepted in writing by the Supplier. Such deviating conditions shall not affect the applicability of the other provisions of these Terms and Conditions.

### **ARTICLE 2. Formation of the contract**

2.1 All offers, quotations and advice provided by the Supplier, as well as all orders and instructions issued by the Customer, are without obligation in respect of the Supplier and are non-binding upon the Supplier.

2.2 Contracts between the Supplier and the Customer shall come into force if and insofar as the Supplier has sent a written (order) confirmation or (advance) invoice to the Customer, or – if earlier – if the Supplier has begun to carry out the Customer's order, including the delivery of products.

2.3 All documents and information (including drawings, images, models, processing proposals, (technical) specifications, descriptions, dimensions and weights, time studies) and product information (including quotations, brochures and leaflets) shall under no circumstances be binding upon the Supplier.

2.4 The documents and information mentioned in the previous paragraph, tools and all data generated via the (software in) products supplied to the Customer by the Supplier are or remain or shall become the property of the Supplier, even if the Customer is charged for them. The Customer gives the assurance that it will neither reproduce nor disclose to third parties the documents, information and data in question without the Supplier's permission, except for the purpose of performing the contract.

2.5 The Customer shall, in any event, provide the Supplier with all data and information necessary for the formation and performance of the contract, including, but not limited to, all functional and technical specifications, in full and in a timely manner. The Customer guarantees that this data and/or information is correct, complete, reliable and accurate and does not infringe the rights of third parties nor conflict with Dutch and/or European laws and regulations.

2.6 Where personal data is processed by (third) parties, the parties shall enter into additional written agreements in this regard prior to such data processing, in accordance with the applicable laws and regulations concerning the protection of personal data. Any such additional written agreements shall form a supplement to the agreement between the parties.

### **ARTICLE 3. Prices**

3.1 Unless otherwise agreed in writing, prices are in euros, exclusive of packaging and shipping costs, exclusive of VAT and other government levies applicable to the sale and delivery and are based on delivery CPT (location within the EU as specified by the Customer) in accordance with the latest version of the Incoterms. Unless otherwise agreed in writing, the prices referred to in the previous paragraph exclude the cost of siting, installation and/or assembly. Where such costs are set out in an order confirmation, these costs are in euros, exclusive of VAT and other government levies applicable to the sale and delivery, and exclusive of the costs and expenses of third parties engaged by the Supplier.

3.2 If, after the date of the formation of the contract, factors or unexpected circumstances arise that lead to an increase in price (including price increases for raw materials or goods procured by third parties, changes in exchange rates and cost increases due to government measures), the Supplier shall be entitled to increase the prices after notifying the Customer in writing.

3.3 Rounding differences in prices may be either positive or negative, the Supplier reserving the right to round prices in price calculations as is reasonable.

## ARTICLE 4. Payments

4.1 All agreements with the Customer shall be entered into by the Supplier on condition of proof of the Customer's creditworthiness.

4.2 Upon the Supplier's first request, which the Supplier may make at any time, the Customer shall provide security, in a manner to be specified by the Supplier, for the timely and correct fulfilment of its obligations to the Supplier.

4.3 Unless otherwise agreed in writing, all payments must be made within 30 (thirty) days of the date of the invoice. However, if delivery of the product in question takes place before the end of this payment period, payment (in the case of payment by instalments: all instalments) must be made no later than by the date on which the risk for the product passes from the Supplier to the Customer, as specified in Articles 5.4, 5.5 and 5.6. The Customer is not entitled to begin using any product until it has fulfilled all its obligations under the contract.

4.4 Payments are to be made without deduction for any discounts or set-off and without deferment. Once the payment period has been exceeded, the Customer shall automatically be in default and the amount due shall be payable immediately, without further warning or notice, plus interest at the statutory commercial rate, as specified in Art. 6:119a and Art. 6:120 para. 2 of the Civil Code of the Netherlands [*Burgerlijk Wetboek*], increased by 3 (three) percentage points per year, plus all court and other costs related to the collection of this debt.

4.5 The Supplier is entitled at any time to demand full or partial payment in advance or to insist on cash on delivery only.

4.6 Complaints concerning (advance) invoice(s) must be submitted to the Supplier in writing within 14 (fourteen) days of the invoice date, failing which the (advance) invoice(s) shall be deemed to have been accepted. After that time, no further complaints will be processed by the Supplier. Under no circumstances shall any complaint entitle the Customer to suspend the performance of its obligations under any contract.

4.7 In the event of (an equivalent under foreign law of) the bankruptcy, administration or (voluntary or involuntary) winding-up or liquidation of the Customer, and in the event of (an equivalent under foreign law of) attachment before judgment or in execution affecting all or part of the Customer's assets or income or in the event of a moratorium on payments and if an administrator is appointed with regard to the Customer, the death of the Customer or in the event that the Customer has failed to fulfil one or more of its obligations under these Terms and Conditions or under any contract in time, properly or at all, all claims (on whatever basis) of the Supplier shall fall due immediately, without further warning or notice.

## **ARTICLE 5. Delivery, period, transportation, risk, packaging and return**

5.1 Although the agreed (delivery) period for products, siting, installation and/or assembly or performance of other services is not binding, the Supplier shall endeavour to abide by this in good faith.

5.2 The period for delivery or performance of a contract shall begin on the following date, whichever is the latest:

- a. The date on which the contract concerned comes into force;
- b. The date on which the Supplier receives the documents, information, permits and the like necessary for the performance of the contract;
- c. The date on which the necessary formalities for delivery, siting, installation and/or assembly are fulfilled;
- d. The date on which the Supplier receives whatever must be provided before delivery in the case of payment in advance.

5.3 Transgression of the delivery period shall not entitle the Customer to dissolve or suspend the contract, in full or in part, nor to compensation for any direct or indirect loss.

5.4 Unless the parties have agreed otherwise in writing, delivery of products shall take place “ex works” in accordance with the provisions concerning the manner of delivery contained in the latest version of the Incoterms, currently the Incoterms® 2020.

5.5 From the time of delivery, the products shall be at the Customer’s expense and risk, whether or not their siting, installation or assembly remains to be carried out. The Supplier shall not be liable for any loss associated with their transportation nor delays thereto.

5.6 If the parties have agreed an acceptance protocol, the risk relating to the products shall pass to the Customer when the products are physically transferred to the Customer and (i) the Customer has accepted the products according to the agreed acceptance protocol, or (ii) when the Customer first uses the products, whichever is earlier. The Customer gives the assurance that signature acknowledging acceptance in accordance with an acceptance protocol shall always be provided by a duly authorised representative on the Customer’s behalf.

5.7 The Supplier will not accept any returned packaging.

5.8 If the products are not accepted by the Customer after the delivery date or after the end of the delivery period, the Supplier shall be entitled to store the products or to have them stored at the Customer’s expense and risk, and any outstanding full or partial payments shall become payable immediately, without further warning or notice.

5.9 Early or partial delivery is permitted at any time. The Customer is obliged to accept such delivery from the Supplier. These Terms and Conditions also apply to partial deliveries.

5.10 The Customer is obliged to check the products delivered, the packaging, where applicable the siting, installation/assembly and performance of other services immediately for any (visible) defects and/or deficiencies, if and as soon as the Supplier informs the Customer that (i) the products are ready for the Customer and/or (ii) the products have been sited/installed/assembled and/or (iii) the Supplier reports that the works to be carried out have taken place. Any safety testing under an acceptance protocol must be arranged and performed at any event within 30 (thirty) days of delivery. The Customer must notify the Supplier of any (visible) defects observed in the delivered goods, packaging, siting/installation/assembly or other works carried out, or deficiencies, in writing by return, failing which the Customer shall be deemed to have approved the delivery, siting/installation/assembly or performance of the works. In that case, complaints regarding the delivery, siting/supply or performance of the works, excepting the provisions of Article 13.2, will no longer be processed in this respect.

5.11 Return shipments must first be requested on the website, following which the Customer will be given an RMA number. The items concerned must be then returned in perfect condition, in the original packaging, carriage paid, and must always be accompanied by the delivery note or invoice. Otherwise, the return shipment may be rejected or a 100% return charge may be made, at the Supplier's discretion and option. Collection of returned items by the Supplier is possible, see 5.15.

5.12. Non-standard items such as band saws welded to size and specials ordered or ground cannot be returned.

5.13. The Customer may return items within 90 days from the original date of receipt, unless such items were produced specially for the customer. For products received more than 90 days previously, but within 1 year, an additional return charge of 10% shall apply. Items received more than 1 year previously cannot be returned.

5.14. Return shipments with a net value of less than 30 euros will not be processed and therefore not credited. Returned items may be grouped together for return shipment.

5.15. The standard charge for processing returned items is 5 euros and will be billed to the Customer by the Supplier. If the option to have the returned items collected by the Supplier is taken up, an extra charge of 27.50 euros will apply (in addition to the 5 euros already mentioned).

## **ARTICLE 6. Retention of title**

6.1 The Supplier shall retain the title to all products supplied to the Customer by the Supplier until such time as all sums owed by the Customer to the Supplier under the contract have been paid in full (including interest and charges and any claims for

compensation). Until the aforementioned payment has been made in full, no restricted right may be established to those products, and neither they may be disposed of.

6.2 The Customer is required to store all products sold and delivered to it by the Supplier in its business separately and in a clearly identifiable manner until the Supplier has received payment in full for them. The Customer also has a duty of care in respect of the products falling under the retention of title and shall insure them and keep them insured against all risks customary in the sector, including but not limited to fire, theft, explosion and water damage.

6.3 If the Customer fails to fulfil any agreement between the parties, the Supplier shall be entitled at any time to take back all goods delivered by it itself or to arrange for this to be done. Accordingly, any claim of the Supplier against the Customer shall also become payable immediately.

6.4 All costs relating to the exercise of the retention of title (including the cost of shipping and storing products, where applicable) shall be borne in full by the Customer.

## **ARTICLE 7. Suspension and termination**

7.1 If and insofar as:

- The Customer has failed to fulfil one or more of its obligations under these Terms and Conditions or under any other contract with the Supplier properly, in a timely manner or at all;
- Third parties assert rights with regard to the Customer's property, or its products are seized, or equivalent legal measures are taken under foreign law;
- The Customer applies for a moratorium on payments or bankruptcy (or the equivalent under foreign law) or a moratorium on payments is applied for or bankruptcy proceedings are instituted against the Customer, the Customer enters into a payment arrangement with one or more of its creditors or otherwise gives the impression of being insolvent, or about to become so;
- The Customer (if a natural person) dies, is placed under receivership or administration (or the equivalent under foreign law) or if the Customer expresses a wish to be considered for the debt management scheme;
- The Customer proceeds with the winding-up or liquidation of its business, voluntarily or otherwise, (or the equivalent under foreign law), the business continues in a different legal form or the registered office or place of business is moved to a different country, direct or indirect control of the Customer is transferred to a third party;
- The Customer transfers rights under any contract to which these Terms and Conditions apply to a third party;

the Supplier is authorised, at its option, to suspend its obligations towards the Customer, on whatever basis, until the Customer has fulfilled all of its obligations towards the Supplier and/or to terminate the contract, wholly or partially, without further notice, in both cases without the involvement of the courts, by means of a written declaration and without being liable in any way whatsoever towards the Customer in this regard for loss, costs and interest, notwithstanding the right of the Supplier to claim full compensation.

7.2 Notwithstanding the provisions of the previous paragraph, the Customer's power to terminate a contract between the Supplier and the Customer on the basis of Article 6:265 of the Civil Code of the Netherlands is ruled out, unless the parties agree otherwise in writing in their contract, in which case the different arrangement shall only apply to the contract in question.

## **ARTICLE 8. Force majeure**

8.1 Force majeure means any circumstance beyond the Supplier's control – even if such circumstance were foreseeable at the time of the formation of the contract – which permanently or temporarily obstructs the performance of the contract, wholly or in part, including but not limited to threat of war, war and kindred risks, civil war, war damage, terrorism, mobilisation, riot, (natural) disasters, epidemics/pandemics, industrial action, lockout, problems with equipment for employees, transport problems, import or export restrictions, fire and other serious disruption of the Supplier's business (including strike, excessive sickness absence, defects in machinery, disruption to energy supplies or data communications, disruption by malware) and the impossibility of performing the contract due to any shortcoming on the part of the Supplier's supplier(s) or of third parties engaged by the Supplier to perform the contract, including installers engaged by the Supplier.

8.2 In the case of force majeure, the parties shall be entitled to suspend their obligations under the contract, the party affected by force majeure undertaking to inform the other party of the situation of force majeure immediately. In the event that the situation giving rise to force majeure lasts for longer than 3 (three) months, either party may terminate the contract unilaterally, wholly or in part, by giving written notice to the other party, without the parties being obliged to pay any compensation to one another.

## **ARTICLE 9. Intellectual property rights**

9.1 All intellectual property rights relating to products sold and supplied by the Supplier (whether or not associated with their siting, installation or assembly) and relating to all associated software and the works carried out by the Supplier, shall remain with the Supplier or (if applicable) its supplier(s)/licensor(s) and shall belong exclusively to the Supplier or (if applicable) its supplier(s)/licensor(s). This includes patent rights, trademark rights, copyright, design rights, know-how, trade name rights, database rights

and exclusive licensing rights. The supply of a product, software and/or service originating from the Supplier cannot be characterised as an explicit or implicit licence for use, publication, duplication, exploitation or disclosure to third parties of the intellectual property rights, unless express written permission is obtained for this from the Supplier.

9.2 All drawings, documents, technical data, specifications, user instructions, advice, software and/or other information provided to the Customer by the Supplier or (if applicable) its supplier(s)/licensor(s) which are or may be the subject of any intellectual property right or a similar right are vested in the Supplier or (if applicable) its supplier(s)/licensor(s) and shall be returned to the Supplier by the Customer at the Supplier's first request.

9.3 The Customer shall notify the Supplier immediately if it discovers that a third party is infringing any intellectual property right of the Supplier or (if applicable) its supplier(s)/licensor(s) or if a third party makes any claim against the Customer in relation to the intellectual property rights of the Supplier or (if applicable) its supplier(s)/licensor(s). If the Supplier so requires, the Customer shall provide any assistance reasonably to be expected as may bring the actions constituting an infringement or the dispute to an end as quickly as possible.

9.4 In the event that the Supplier manufactures products or develops software based on drawings, models, specifications or other instructions, in the broadest sense, from the Customer, the Customer shall fully guarantee that no copyright, trademark, patent, model or any other right of third parties is infringed by the manufacture, stocking, marketing, supply and/or use of these products or software and the siting, installation and/or assembly of products including software. The Customer shall indemnify the Supplier against any loss, including costs and interest, resulting directly or indirectly from claims by such third parties.

9.5 If a third party, based on any alleged right, objects to the manufacture, stocking, marketing, supply and/or use of the above-mentioned products and software and the siting, installation or assembly of products or software, the Supplier shall be entitled to cease the aforementioned actions immediately, without being obliged to compensate the Customer for this and without prejudice to the Customer's obligation to indemnify the Supplier as stipulated in the previous paragraph.

9.6 In the event that the Customer infringes any intellectual property right as defined in this article, the Supplier may claim from the Customer an immediate penalty, payable immediately and non-offsettable, per infringement and for each day that this infringement occurs, for an amount equal to the total price of the product and/or service affected by the infringement, without prejudice to the Supplier's right to compensation in full.

## **ARTICLE 10. Commissioning and assembly**



10.1 The Supplier shall not be required to begin siting, installing or assembling products until all necessary information and data have been provided to the Supplier by the Customer and (if applicable) the Supplier has received the agreed payment for this.

10.2 The Supplier shall ensure that the siting, installation and/or assembly of the products is carried out properly and thoroughly, this obligation having the nature of a *best efforts* obligation for the Supplier.

10.3 If the parties have agreed on siting, installation and/or assembly, the Customer shall ensure that the local circumstances and environment of the location at which the siting, installation and/or assembly is to be carried out are such that the Supplier can perform the contract properly and without being disturbed. For example, access doors must be of sufficient dimensions; foundations, floors and walls on or against which products are to stand or to which the products are fixed must be adequately constructed in a timely manner. Moreover, the Customer shall always make sufficient materials and (extra) manpower available at its own expense.

10.4 Works outside the scope of the siting, installation and/or assembly or caused by the Customer's failure to adequately fulfil its obligations under the previous paragraph, shall be for account of the Customer.

## **ARTICLE 11. Software and data**

11.1 Where the Supplier provides the Customer with software for the use of a product, such provision is always on a non-exclusive basis.

11.2 At any event, the Supplier shall be entitled (but not obliged) to modify or adapt the (control) software, provide a new version, upgrade or update and change the functionalities and/or features of the software at any time.

11.3 The software may be used solely by the Customer, to the exclusion of any other party.

11.4 The Customer acknowledges that the software provided with products is supplied "as is" and with no guarantees other than as set out in Article 14.

11.5 If the Customer fails to adequately fulfil its obligations under these Terms and Conditions and/or any contract between the parties, or if the Supplier considers it necessary for safety reasons, the Supplier, having warned the Customer of the measures to be adopted by it, shall be entitled to deny the Customer the ability to use software necessary for a product (and thus possibly render the machine in question unusable) until such time as the Supplier (at its discretion) has established that the Customer has adequately fulfilled its obligations or the safety risks noted by the Supplier have sufficiently reduced.

11.6 The Supplier is and remains the right holder of all information and data generated by the products and software supplied by the Supplier and shall be entitled to analyse such information and data, for example in order to improve its products and software.

## **ARTICLE 12. Obligations of the Customer**

12.1 The Customer shall always take due care of each product supplied and is required to follow all user instructions and to adopt all measures and to comply with all instructions to be taken into account when using the product and which contribute to the sustainability of the product and the safety of the product and its user, including carrying out (prescribed) maintenance or repair works, or causing them to be carried out, in a timely manner.

12.1 The Customer is required to pass on user instructions specified by the Supplier clearly and explicitly to third parties (including, but not limited to, employees of the Customer) using the product.

12.3 The Customer shall ensure that the products are used and operated solely by employees who are trained and certified for this purpose and are in possession of the required skill level and necessary expertise and, in so doing, the Customer shall ensure that it always has sufficient trained staff for this purpose.

12.4 The Customer shall engage no third parties for maintenance and/or repair works regarding the products unless this is agreed between the parties in writing.

12.5 The Customer shall not begin to use the products until the associated (partial) invoices have been settled in full, including interest and charges.

12.6 The Customer shall indemnify the Supplier against all requests and claims by third parties for compensation, performance or other matters, insofar as this concerns requests and claims relating to or resulting from failure by the Customer to comply with these Terms and Conditions, wholly or in part, or with any agreement between the Supplier and the Customer or legal requirements or other requirements of the Supplier, or the failure of the Customer to inform third-party users, or to inform them fully, in the event that the product is in use. The Customer is also required to provide compensation for all loss or damage suffered by the Supplier in such a case, including damage to the Supplier's good name and reputation.

## **ARTICLE 13. Complaints**

13.1 In the event of complaints regarding visible defects (as referred to in Article 5.10) and hidden defects (as referred to in Article 13.2) in products or complaints regarding

the carrying-out of works by the Supplier, the Customer shall be required to comply with all verbal and written instructions (including user instructions) from the Supplier (such as switching off or ceasing to use the product in question) immediately.

13.2 Complaints regarding hidden defects in products delivered or works carried out must be reported to the Supplier in writing as soon as possible – with the nature of the defect and the grounds for the complaint being specified – and, in any event, within 3 (three) working days after the discovery of the defect in the product or – in the case of the siting/installation/assembly or carrying-out of any works by the Supplier – within 24 hours of the siting/installation/assembly or performance of the service, failing which the siting/installation/assembly of the products and/or the carrying-out of the works performed shall be deemed to have been accepted. If the user instructions for the product concerned specify a shorter period, the shorter period specified shall apply.

13.3 Once a complaint has been reported in writing in accordance with the previous paragraph, it shall be investigated by the Supplier as speedily as possible in order to discover whether or not it is justified. To this end, the Customer shall allow representatives of the Supplier to inspect and assess the product in question or the works carried out at the Customer's offices and/or plant. If, in the opinion of the Supplier, the complaint concerning a product supplied and/or works carried out by the Supplier is justified and the Customer – also in the Supplier's opinion – has managed to provide sufficient proof that the defect, as referred to in Articles 13.2 and 5.10, already existed at the time of delivery or the completion of performance, the Supplier shall, at its option, replace the defective product or part of the product free of charge, repair the defect or the defective part of the product or re-perform the works carried out free of charge, without the Customer being entitled to compensation.

## **ARTICLE 14. Guarantee**

14.1 The Supplier guarantees, for a maximum period of 12 (twelve) months (or a shorter period in the event that the products are used in shifts) after delivery, the conformity of the products supplied and/or manufactured for their purpose and normal use, subject to the conditions relating to the product in question set out for the Customer in writing and contained in the product information sheets and/or user instructions supplied to the Customer by the Supplier in relation to the product in question.

14.2 In the event of siting/installation/assembly by the Supplier, the period referred to in the previous paragraph shall commence on the day on which the siting/installation/assembly by the Supplier is completed, on the understanding that in that case the period shall end at any event once 18 (eighteen) months have elapsed since delivery.

14.3 Under no circumstances shall the Customer be entitled to the guarantee specified in the previous paragraph if: - the Customer fails to fulfil one or more obligations towards the Supplier on whatever basis, such as payment in full of all relevant (partial)

invoices, including any interest and charges, as referred to in Article 4.3; - the alleged defect cannot be classed as a defect arising/occurring in the course of the normal use of the products supplied or is caused by any form of wear and tear resulting from normal use; - the supplied products are used in circumstances that do not correspond to the circumstances for which they are intended and/or maintenance has not been carried out in accordance with the prescribed maintenance intervals; - the supplied products are sited or assembled, stored, modified, processed, used or maintained contrary to the instructions given by the Supplier or are repaired by someone other than the Supplier or using non-original parts; - the supplied products are used or operated by persons who are not trained to do so and/or do not possess the required level of expertise or the required skills;- the Customer was or should have been aware of the defect, or the defect was caused by a circumstance which arose after the products were delivered to the Customer.

14.4 In the event that any defect arises, the Customer shall inform the Supplier of the complaint and of the nature of the defect in writing immediately, but in any case no later than 3 (three) working days after the point in time at which the defect could reasonably have been discovered. The Customer's right to rely on the conformity of the product shall lapse in any case once the above-mentioned period has elapsed.

14.5 If, in the Supplier's opinion, the provisions of Article 14.1 are rightfully relied upon, the Supplier shall at any event – exclusively and at its option – replace the defective product or part thereof free of charge, in which case the defective product or the part in question shall become the property of the Supplier, or repair the defect or the defective part of the product, or reperform the service, without the Customer being entitled to compensation in any case. Costs in excess of the normal costs of repair or replacement of the products or parts of them shall be for the account of the Customer. The same shall apply to transport, travel and wage costs. The Customer shall co-operate fully with the Supplier in all circumstances so as to allow the Supplier to repair the defect within a reasonable period of time, without the Supplier incurring any costs in this respect.

14.6 No guarantee is given for inspections, advice and similar services performed by the Supplier.

14.7 The alleged failure of the Supplier to fulfil its guarantee obligations shall not release the Customer from the obligations incumbent upon it under its own contract entered into with the Supplier. The Customer is not entitled to terminate the contract under any circumstances.

14.8 The provisions of this article are exhaustive and exclude any other right, warranty and remedy written or verbal, explicit or implicit, including those referred to in Title 7.1 of the Civil Code of the Netherlands and also warranties in respect of saleability or suitability for a purpose other than that for which the product supplied is intended.

14.9 If the Supplier delivers products to the Customer which the Supplier has obtained from its own supplier(s), whether or not the Supplier sites, installs or assembles them, the Supplier shall never be liable with regard to the Customer for more than the Supplier

can claim in respect of its own supplier(s) and which is actually honoured in the case in question by its own supplier(s).

## **ARTICLE 15. Liability**

15.1 The Supplier's liability for the (delivery/siting/installation/assembly of) products is limited to compliance with the undertakings defined in Article 14 of these Terms and Conditions.

15.2 Without prejudice to the above, the Supplier shall under no circumstances (meaning: neither in the case of the supply of products, nor in the case of the performance of services, both as set out in Article 1.2) be liable for loss or damage resulting from a shortcoming with regard to the Customer, whether or not this is attributable, or for loss or damage resulting from a wrongful act with regard to the Customer, unless the loss or damage in question is caused intentionally or by wilful recklessness on the part of the Supplier's directors or employees in a managerial position forming part of the management.

15.3 The Supplier shall under no circumstances (meaning: neither in the case of the supply of products, nor in the case of the performance of services, both as set out in Article 1.2) be liable for business interruption, consequential and/or indirect loss, including but not restricted to loss of profits and turnover, loss incurred, loss due to delay, environmental damage and pecuniary loss, suffered by the Customer. Nor shall the Supplier be liable for loss or damage attributable to an act or omission on the Customer's part or on the part of a third party engaged by the Customer.

15.4 Notwithstanding the above provisions, in any case, the Supplier's liability shall be limited to the original purchase price of the products plus the cost of their siting, installation and/or assembly, or, in the case of the performance of a service, the value of the contract, unless the parties agree otherwise in writing.

## **ARTICLE 16. Agreements for the performance of works/services**

16.1 The contract regarding the works to be carried out by the Supplier for the Customer is entered into for an indefinite period, unless it follows from the content, nature and scope of the contract that it is entered into for a specific period or will terminate once the agreed works have been performed.

16.2 The Supplier shall not be required to begin carrying out the agreed works until all necessary information in accordance with Article 2.5 is in the Supplier's possession and the Supplier has received the agreed payment or instalment, as charged via an advance invoice.

16.3 All orders will be accepted and carried out exclusively by the Supplier. Articles 7:404 and 7:407 para. 2 of the Civil Code of the Netherlands do not apply.

16.4 In carrying out its works, the Supplier shall exercise due care as a Supplier, this obligation being in the nature of a *best efforts* obligation to be met by the Supplier, unless expressly agreed otherwise in writing.

16.5 Upon the completion of the works to be performed by the Supplier, the Supplier shall send the Customer a final account. Should the contract be terminated (prematurely), the Supplier shall also send a final account relating to the services performed up to the point of termination.

16.6 Either the Supplier or the Customer shall be entitled to cancel the agreement for the performance of services (whether this is entered into for a fixed or an indefinite period) in writing at any time, prematurely or otherwise, by giving 3 (three) months' notice, unless the parties have agreed a different notice period in writing.

## **ARTICLE 17. Confidentiality**

17.1 The Customer is required to treat as confidential any information or data supplied by or on behalf of the Supplier, which the Customer knows or can reasonably be expected to know is secret and/or confidential and/or whose disclosure could be detrimental to the Supplier. The Customer is also required to treat as confidential advice, opinions or other statements provided by or on behalf of the Supplier (in the broadest sense), on the understanding that they may be used within the Customer's own organisation. However the provisions of the previous sentences do not apply if the Supplier has given its prior express written permission for the information in question to be disclosed or if disclosure takes place by order of a court or decision of a competent authority.

## **ARTICLE 18. Disputes and applicable law**

18.1 All disputes arising from an undertaking between the Supplier and the Customer and all disputes relating to these Terms and Conditions and all ensuing extracontractual obligations shall be settled by the Dutch court with jurisdiction over the district in which the Supplier has its registered office.

18.2 Dutch law is applicable to all undertakings between the Supplier and the Customer, these Terms and Conditions and all ensuing extracontractual obligations. The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980) does not apply.

18.3 These Terms and Conditions are drawn up in the Dutch language and translated into other languages. Should any differences in wording and/or interpretation arise between these versions, the Dutch version of the Terms and Conditions shall always prevail.