

**B2B TERMS AND CONDITIONS**

# **4 EVERYWARE**

## **ALWAYS A BIG DEAL**

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## 1. Definitions

- 1.1 In these General Terms and Conditions, the following terms are used with the meanings described below, unless explicitly stated otherwise:

<b>Offer</b>	: Any offer (at a reduced rate), explicitly indicated as an offer.
<b>Quotation</b>	: Any written offer to the Customer for the supply of Goods by the Seller.
<b>Customer</b>	: The natural or legal person, not being a consumer, who acts in the course of a profession or business, enters into an agreement (remotely) with the Seller (B2B).
<b>General Terms and Conditions</b>	: these General Terms and Conditions of the Seller;
<b>B2B</b>	: Business-to-Business (consumer law not applicable);
<b>Consumer</b>	: the natural person who does not act in the course of a profession or business and enters into an agreement (remotely) with the entrepreneur (B2C);
<b>Agreement</b>	: The purchase agreement (remotely) which aims at the sale and delivery of Goods purchased by the Customer from the Seller;
<b>Seller</b>	: The supplier of Goods to the Customer, being 4Everyware B.V., registered in the Trade Register of the Chamber of Commerce under reference: 18071680, located and having its registered office at De Sonman 30 (5066GJ) in Moergestel (Oisterwijk);
<b>Goods</b>	: The products/goods offered by the Seller.

- 1.2 The aforementioned terms can be used - without losing their meaning - both in singular and plural.
- 1.3 If in these General Terms and Conditions reference is made to "she/her", this should also be interpreted as a reference to "he/him/his", if and to the extent applicable.
- 1.4 The names or designations (such as titles and/or paragraphs) in this Agreement are solely provided for the convenience of the reader. No rights whatsoever can be derived from their indication.
- 1.5 Ambiguities about the content and/or interpretation of - and/or situations not regulated in these General Terms and Conditions should be assessed and interpreted according to the spirit of these General Terms and Conditions.
- 1.6 In the event of an explanation of the content and scope of these general terms and conditions, the Dutch text thereof shall always prevail.
- 1.7 If one or more provisions of these General Terms and Conditions are (partially) null and void or are annulled, the other provisions of these general terms and conditions shall remain in force and the null and void/annulled provision(s) shall be replaced by a provision with the same purport as the original provision.

## 2. Applicability

- 2.1 These General Terms and Conditions apply to any Quotation or Offer made by the Seller, any Agreement between the Seller and a Customer, as well as to all (possible) additional, amended or subsequent agreements with a Customer.
- 2.2 The applicability and use of (any) general or purchasing conditions of the Customer are explicitly rejected, unless the Seller has expressly and unequivocally accepted these conditions.
- 2.3 These General Terms and Conditions apply exclusively to B2B situations.

## 3. Amendment and/or deviation of these General Terms and Conditions

- 3.1 These General Terms and Conditions may only be deviated from by explicitly and in writing agreeing on any deviation(s) with the Seller. The other provisions of these General Terms and Conditions shall remain in full force and effect.
- 3.2 Any (agreed) deviating provisions of these General Terms and Conditions shall only apply to that Agreement for which those deviating provisions have been agreed and not for the subsequent Agreements.

## 4. Offer

- 4.1 Each Offer has - in principle - a validity period of seven (7) days from the date, unless the Offer contains a different acceptance period.
- 4.2 Each Offer is, unless expressly stated otherwise in writing, non-binding.

- 4.3 Any (oral) commitments made by the Seller or its staff, representatives, agents or other intermediaries are only binding if subsequently confirmed in writing by an authorized person.
- 4.4 The description of any Offer made shall be sufficiently detailed to enable the Customer to make a proper assessment of the Offer.
- 4.5 If the Offer is limited or subject to specific conditions, the Seller shall state this in the Offer.
- 4.6 Obvious mistakes or errors in the Offer cannot bind the Seller.
- 4.7 An Offer and/or Quotation does not automatically apply to repeat orders, unless explicitly agreed upon in writing.
- 4.8 A composite price quotation does not oblige the Seller to deliver part of the Goods included in the Quotation or Offer at a proportionate part of the quoted price.
- 4.9 For deliveries for which no quotation or order confirmation is sent due to their nature or scope, the delivery note and/or the invoice shall also be considered as an order confirmation, which is also deemed to accurately and completely reflect the Agreement.
- 4.10 Delivery times and periods stated in the Seller's Offer are indicative and do not entitle the Customer to dissolve the Agreement or claim damages for their exceeding, unless expressly agreed otherwise in writing.
- 4.11 The Seller has the right to revoke any Offer.

## **5. Prices and security**

- 5.1 The prices stated in the Offer are, unless expressly stated otherwise, exclusive of value-added tax (VAT).
- 5.2 The prices mentioned in the Offer are based, among other things, on the cost factors applicable at the time of conclusion of the Agreement. During the validity period of the Offer, the prices of the offered Goods will not be increased, except in the case of changes in freight, unloading, insurance, customs or (sales) tax rates and/or import or export costs/duties. In the event of an increase in one or more cost price factors, the Seller is entitled to increase the order prices accordingly.
- 5.3 The prices offered by the Seller apply only to the quantities offered.
- 5.4 If Goods are subject to price fluctuations on the (financial) market, over which the Seller has no influence, the Seller may also offer Goods at variable prices. In the Offer, it will then be stated that the prices are "only" indicative and may therefore fluctuate.
- 5.5 The Seller may at any time require the Customer, before proceeding with the execution of the Agreement or continuing the partially initiated execution of the Agreement, to:

- 5.5.1 pay an advance payment of up to 25% of the total payment obligation resulting from the Agreement, or;
- 5.5.2 provide a security deemed sufficient in banking traffic, such as an irrevocable bank guarantee up to 25% of the order amount.

At the Seller's discretion.

- 5.6 If the Customer refuses to provide an advance payment or security upon request, as referred to in the above paragraph, the Seller is entitled to immediately:

- suspend the Agreement, or;
- dissolve it.

The foregoing does not affect the Seller's right to compensation for damage suffered as a result of the dissolution.

## **6. Conclusion of the Agreement**

- 6.1 The Agreement is only concluded at the moment when:
  - 6.1.1 the Customer has accepted the Seller's Offer in writing in a timely manner (read: within seven (7) days from the date of the Offer, or within the period set by the Seller), and;
  - 6.1.2 the Seller has confirmed the acceptance of the Offer by the Customer (in writing) to the Customer.
- 6.2 The Seller reserves the right to refuse an Agreement with a (potential) Customer for valid reasons, without any liability towards the Customer arising therefrom.
- 6.3 Deviations from a written confirmation of an Agreement by the Customer shall be deemed to be an offer from the Customer and shall only bind the Seller if this offer has been expressly and in writing accepted by the Seller

- 6.4 The Seller is not bound by an Offer if the Customer could reasonably have expected or should have understood or ought to have understood that the Offer contains an obvious mistake or clerical error. The Customer cannot derive any rights from such an (obvious) mistake or clerical error.

## **7. Execution of the Agreement**

- 7.1 The Seller shall execute the Agreement to the best of its knowledge and ability.
- 7.2 The Seller has the right to have (certain) work performed (at its own discretion) by third parties.
- 7.3 The Seller endeavours to take into account the instructions of the Customer in the execution of the Agreement. However, the Seller is not obliged or otherwise obligated to follow any instructions from the Customer.
- 7.4 If the instructions of the Customer result in additional work for the Seller, the Customer is obliged to reimburse the additional or incidental costs accordingly. The Seller will inform the Customer in advance, if possible, of the possibility of additional costs resulting from this additional work.
- 7.5 The Customer shall ensure that all data, which the Seller indicates to be necessary or which the Customer should reasonably understand to be necessary for the execution of the Agreement, are provided to the Seller in a timely and complete manner.
- 7.6 If the data necessary for the execution of the Agreement have not been provided to the Seller in a timely and/or complete manner, the Seller has the right to suspend the execution of the Agreement. The Seller shall not be liable for any damage to the Customer resulting from the non-fulfilment, delayed or partial fulfilment of the Agreement by the Customer.
- 7.7 The Seller is not liable for any damage of any kind whatsoever caused by the Seller relying on incorrect and/or incomplete data provided by the Customer.
- 7.8 The Customer indemnifies the Seller against any claims from third parties that suffer damage in connection with the execution of the Agreement and which are attributable to the Customer.
- 7.9 The Seller reserves the right to demand security or advance payment from the Customer before proceeding with the execution of the Agreement or continuing the partially initiated execution of the Agreement.
- 7.10 The administrative data of the Seller, including the data and information on the invoice and waybill, are decisive. This is without prejudice to the case that the Customer has provided sufficient proper and objective counter-evidence.
- 7.11 All sales quantities mentioned in the Offer are subject to change. A deviation of up to ten (10) % from the number of goods to be delivered will only lead to an adjustment of the sales price, but does not give the Customer the right to (partially) dissolve the Agreement and/or claim compensation. In the event of a deviation of more than ten (10) %, the Customer has the right to dissolve the Agreement, without any right of compensation.

## **8. Changes, additions and/or cancellation of the Agreement**

- 8.1 Changes, additions or cancellation of the Agreement after its conclusion is only possible after express and written consent of the Seller.
- 8.2 Changing and/or supplementing an Agreement may lead to a change in the originally agreed delivery time of the Goods.
- 8.3 Change or cancellation of an Agreement is in any case not permitted if the Goods have been specially purchased for or at the request of the Customer.
- 8.4 Change or cancellation of an Agreement is also not possible when the Goods have already been dispatched for delivery to the Customer.
- 8.5 The implementation of any urgent changes (verbally) specified by the Customer is entirely at the expense and risk of the Customer. The Seller reserves the right to pass on the costs incurred by her in this regard to the Customer.
- 8.6 The Seller reserves the right to charge the Customer for any (additional) costs associated with the change, addition or cancellation.
- 8.7 In the event of cancellation, the Customer is also obliged to compensate the Seller for:
- the (incurred) costs of preparation, purchase, storage and the like, related to the execution of the Agreement, increased by;
  - a compensation of 25 (twenty-five) % of the total price agreed upon in the Agreement,
- 8.8 The above clause does not affect the Seller's right to claim compensation for the full (damage caused by the cancellation of the) Agreement.

## **9. Delivery**

- 9.1** Unless otherwise agreed in writing regarding the transportation in connection with the delivery of the Goods, deliveries are made 'ex-works' as referred to in the Incoterms 2020. This means that the Seller has the Goods (excluding packaging) ready for collection at the agreed time, unless otherwise agreed in writing regarding the transportation in connection with the delivery. This is then at the expense and risk of the Customer.
- 9.2** If the Seller and the Customer do have one or more written agreements regarding the transportation in connection with the delivery of the Goods, the following principles apply.
- 9.2.1** The Seller aims to have the delivery of the Goods and the execution of the Agreement take place within the agreed delivery time(s). Any agreed (delivery) terms are indicative and are therefore never a firm deadline. Longer delivery times apply for delivery outside the Netherlands.
- 9.2.2** Exceeding and/or delays in the delivery period do not entitle the Buyer to compensation or cancellation of the Agreement.
- 9.2.3** The delivery time starts only after the Buyer has:
- 9.2.3.1** provided all necessary information and data to the Seller for the execution of the Agreement, and;
  - 9.2.3.2** paid the (if any) requested advance payment, or;
  - 9.2.3.3** provided the (if any) requested security.
- 9.2.4** Unless otherwise agreed in writing, the Seller is entitled to separately charge the (possible) transport/delivery costs to the Buyer.
- 9.2.5** The place of delivery is, unless otherwise agreed, the place mentioned in the order confirmation.
- 9.2.6** The Buyer can change the place of delivery in writing up to ten (10) days before delivery. After that, this is generally no longer possible unless the Seller expressly and in writing agrees to it. The Seller is entitled to pass on the (possible) additional delivery costs in case of a change of the delivery address to the Buyer.
- 9.2.7** The Buyer is obliged to accept the Goods when they are made available to them, even if they are (unexpectedly) offered earlier or later than agreed upon in the Agreement.
- 9.2.8** If the Buyer does not accept the goods at the aforementioned moment, refuses acceptance, or is negligent in providing (correct) (delivery) information and/or (other) instructions necessary for delivery to the Buyer, the Seller is entitled to store the Goods at the expense and risk of the Buyer (with third parties).
- 9.2.9** The Buyer must notify the Seller in writing of the default and allow a reasonable period for delivery.
- 9.2.10** Apart from the aforementioned, the Seller always has the right to a reasonable extension of the delivery period if the commencement, progress, or delivery of the Goods is delayed due to a circumstance beyond its control, such as:
- a Buyer who has not provided all requested information or has not done so in a timely manner, or;
  - a Buyer who does not provide sufficient cooperation, or;
  - the (advance) payment has not been received by the Seller on time.
- 9.2.11** If the delivery time is exceeded by more than one (1) month, due to a cause beyond the Seller's control, then the Buyer is entitled to cancel the Agreement without incurring cancellation costs. This clause does not apply when (specially) ordered Goods for the Buyer or Goods to be customized.
- 9.2.12** If no shipping instructions are given by the Buyer, this will be done to the best of the Seller's ability and without responsibility for the most favorable freight or delivery location.
- 9.2.13** In case of loss, exchange, and/or damage during transport, there is no obligation for replacement delivery, nor for any (damage) compensation for loss of profit, incurred costs for processing or repairing damaged parts, nor for the return of the delivered Goods by the Seller to the Buyer.
- 9.2.14** If delivery must take place outside the Netherlands, the Buyer must, prior to entering into an Agreement with the Seller, inform the Seller in writing of any mandatory legal requirements of the country where the delivery will take place. If the Buyer fails to do so, the Seller cannot be held liable under any circumstances for the consequences of violating these mandatory legal requirements, regardless of the legislation of the respective country.
- 9.2.15** The Seller undertakes towards the Buyer to properly package the Goods to be delivered and to secure them in such a way that they reach their destination in good condition under normal transport.
- 9.2.16** At the request and at the expense of the Buyer, the Goods will be insured.

- 9.2.17** Unless otherwise agreed in writing, all deliveries are inclusive of value-added tax (VAT), including packaging and packaging materials. Any additional costs due to higher or different packaging requirements are borne by the Buyer. The cost estimate provided by the Seller in this regard is binding on the Buyer.
- 9.2.18** Acceptance of Goods without comments on the consignment note or receipt constitutes evidence that the packaging was in good condition at the time of delivery.
- 9.2.19** Returns are only accepted by the Seller if prior permission has been given and they are sent carriage paid.
- 9.2.20** The Seller is entitled to charge a surcharge for handling costs for orders with a low invoice value.
- 9.2.21** Pallets remain the property of the Seller. If they are not returned in good condition, carriage paid, within four weeks after delivery, they will be invoiced to the Buyer at cost price.
- 9.3** Regardless of the method of delivery, it applies that:
- 9.3.1** The Seller is entitled to deliver the Goods in installments unless otherwise agreed upon in the Agreement or the partial delivery has no independent value.
- 9.3.2** The Seller is also entitled to invoice the (partially) delivered separately.
- 9.3.3** As long as the Goods have not yet been delivered, the Buyer cannot claim what is stipulated in article 7.11 of these General Terms and Conditions.
- 9.3.4** Deliveries are only made if all invoices have been paid unless explicitly agreed otherwise.
- 9.3.5** The Seller has the right to retain the Goods purchased by the Buyer, despite an obligation to transfer or deliver them, if the Buyer has not (fully) complied with its payment obligations. Only after the Buyer has (subsequently) fulfilled its (payment) obligations will the Seller endeavor to deliver the purchased Goods to the Buyer as soon as possible.
- 9.3.6** The Seller reserves the right to refuse delivery (i.e., execution of the Agreement) if, in the opinion of the Seller, there is sufficient justified fear of non-payment.
- 9.3.7** Postponement of delivery at the request of the Buyer can only be made with the explicit written consent of the Seller. Any costs and losses resulting from a postponement for the Seller are borne by the Buyer. The cost estimate provided by the Seller in this regard is binding on the Buyer.
- 10. Complaints**
- 10.1** The Buyer must inspect the Goods delivered by the Seller upon delivery. The Buyer is deemed to have received the delivered Goods in good condition and free of defects according to agreement unless the Buyer notifies the Seller of any defects in writing within fourteen (14) days after the Goods have been delivered by the Seller.
- 10.2** Any complaints must be reported in writing within fourteen (14) days after delivery of the Goods by the Seller. This complaint must include a clear description of the complaint. The Buyer must check whether the delivered Goods comply with the Agreement, namely:
- 10.2.1** whether the correct goods and/or services have been delivered;
- 10.2.2** whether the quantity (e.g., number and amount) corresponds to the agreement;
- 10.2.3** whether the delivered goods and/or services meet the agreed quality requirements or the requirements that can be reasonably expected for normal use and/or normal purposes.
- 10.3** Complaints about invoices must be submitted in writing within 14 days after the dispatch date of the invoices.
- 10.4** For hidden defects, complaints must be made within the warranty period and in any case within fourteen (14) days after discovery.
- 10.5** If the Seller finds the Buyer's complaint justified, the Seller may either rectify the defect or refund the net invoice amount. This is at the Seller's discretion.
- 10.6** Complaints received from the Buyer after the aforementioned fourteen (14) days will not be processed by the Seller.
- 10.7** If the Buyer has not complained in writing to the Seller within fourteen (14) days after delivery, the Buyer is deemed to have accepted the delivery and thus also the corresponding invoice(s).
- 10.8** Delivered or accepted Goods by the Buyer in accordance with these provisions will, in principle, not be taken back unless the Seller has confirmed otherwise in writing to the Buyer.
- 10.9** Submitting complaints does not exempt the Buyer from fulfilling its obligations under the Agreement towards the Seller. Therefore, the Buyer is not entitled to suspend (among other things) its payment obligations.

**11. Warranty**

- 11.1** Unless expressly agreed otherwise in writing, the Seller does not provide any warranty on the delivered Goods.
- 11.2** In case the Seller provides a warranty, the warranty period, unless expressly agreed otherwise in writing, is the shortest of the following two (2) periods:

- 11.2.1** the duration of any manufacturer's warranty provided by the producer, with a maximum of;
- 11.2.2** six (6) months after the invoice date.

- 11.3** The (possible) warranty provided by the Seller expires if, for example, one of the following situations occurs (non-exhaustive):

- 11.3.1** the Goods are not used in accordance with their intended purpose, or;
- 11.3.2** the Goods are used improperly, or;
- 11.3.3** the usage instructions are not followed, or;
- 11.3.4** unprofessional repairs to the Goods have been made, or;
- 11.3.5** the Goods have been altered, or;
- 11.3.6** the (serial) numbers have been defaced or removed.

- 11.4** Furthermore, the Buyer cannot claim any warranty if there is normal wear and tear or external circumstances.
- 11.5** Additionally, the Buyer is only entitled to warranty in accordance with these terms and conditions if and when the Buyer has fulfilled all its payment obligations to the Seller.
- 11.6** If the Buyer wishes to invoke a (possible) agreed warranty, it must notify the Seller in writing within 14 days after discovering or reasonably should have discovered the defects. The Goods must be left in an unchanged state after the Buyer has submitted the complaints so that the Seller can (possibly) examine the Goods.
- 11.7** If the Goods delivered by the Seller are defective or of insufficient quality within the warranty period, the Seller is (at most and upon return of these Goods) obliged to:

- 11.7.1** replace these Goods with other (similar) Goods, or;
- 11.7.2** refund the invoice amount for the Goods to be replaced.

This is at the discretion of the Seller.

- 11.8** Before any refund takes place, the Seller is entitled to investigate the authenticity and condition of the returned Goods.
- 11.9** With regard to Goods located outside the Netherlands, the Seller can only be held liable - to the extent that Seller has provided a warranty - for the lowest of the following possibilities:

- 11.9.1** the costs of repair, or;
- 11.9.2** the costs of replacement, with a maximum of the lowest of the following two (2) possibilities:

- (1) billing price between the Seller and the Buyer, or;
- (2) the amount of these costs of replacement if the execution had taken place in the Netherlands.

- 11.10** Any refund to the Buyer will be processed as soon as possible and will be made to the previously provided bank account unless otherwise instructed.
- 11.11** If the Buyer exercises its right to complain, the Buyer has no right to suspend its payment obligation or to set off outstanding invoices.
- 11.12** In the absence of a complete delivery, and/or if one or more Goods are missing, and this is attributable to the Seller, the Seller will, upon request from the Buyer, either send the missing Product(s) or cancel the remaining order. The receipt confirmation of the Goods is decisive here. Any damage suffered by the Buyer as a result of the (deviating) scope of the delivery cannot be claimed from the Seller.
- 11.13** The Buyer indemnifies the Seller against any liability that may rest on the Seller towards third parties with regard to the Goods delivered by the Seller.

- 11.14** Notwithstanding what these terms and conditions stipulate regarding liability, the Seller is never obliged to repair or compensate for any form of indirect or consequential damage caused by the Goods replaced by the Seller.

**12. Recall**

- 12.1** If the Seller, whether or not based on a legal obligation, also including an obligation arising from any European and/or Dutch laws and regulations, needs to recall the delivered Goods or the Goods to be delivered from the market (also called: a 'recall'), the Buyer is obliged to fully cooperate without entitlement to any compensation to ensure that the Goods are withdrawn from the market.

- 12.2** In case of a recall:

**12.2.1** the Agreement will then be considered dissolved, and;

**12.2.2** the Seller will reimburse the purchase price (maximum being the invoice value) to the Buyer, as well as;

**12.2.3** the transportation costs if and to the extent the fault lies with the Seller.

The Buyer is not entitled to additional compensation for any damage whatsoever.

- 12.3** In the event of a recall, the Buyer must bring the Goods to an original state to a central collection point.

- 12.4** For Items that are not returned or not returned in their original condition, Customer shall pay a penalty and/or damages (per Item) to be determined. This penalty shall never be less than the purchase costs plus the costs incurred by Seller.

**13. Payment and Collection Policy**

- 13.1** Customer must make payment in full to the bank account and details communicated to them by Seller.

- 13.2** Payment shall be made within thirty days from the date of the invoice, without deduction or compensation. Parties may only agree to a different payment term after explicit and written consent from Seller.

- 13.3** Each payment term is a firm deadline. In the event of late payment, Customer is immediately in default without the need for any notice of default. The payment date shall be the receipt or booking date of the respective invoice (in Seller's bank account).

- 13.4** From the date Customer is in default, Seller shall claim compensation without further notice, including:

**13.4.1** statutory commercial interest pursuant to Article 6:119a of the Dutch Civil Code from the first day of default until full payment, and;

**13.4.2** extrajudicial costs in accordance with Article 6:96 of the Dutch Civil Code calculated according to the scale from the decree on compensation for extrajudicial collection costs.

- 13.5** If Seller has incurred more or higher costs than the statutory commercial interest and extrajudicial collection costs, these (additional) costs, to the extent reasonably incurred, shall also be eligible for reimbursement by Customer. This also includes legal advice, judicial, and execution costs.

- 13.6** In case of liquidation, bankruptcy, attachment, suspension of payments, request for composition in connection with debts, or a significant financial burden of Customer, Seller's claims against Customer are immediately due and payable.

- 13.7** Seller has the right to apply the payments made by Customer:

**13.7.1** first to deduct from the costs, and;

**13.7.2** then only to deduct from the accrued interest, and;

**13.7.3** finally, to deduct from the principal sum and the ongoing interest.

- 13.8** Seller may refuse an offer of payment without being in default if Customer indicates a different order for allocation than the above.

- 13.9** Seller may also refuse full repayment of the principal sum if the accrued and ongoing interest as well as the costs are not also paid by Customer.

**14. Penalty Clause**

- 14.1** Seller may impose further restrictions on Customer, which restrictions have been imposed on Seller by its (sub)suppliers in the past. These restrictions may include, among other things, the following with respect to Customer's market:



- 14.1.1** The country, area, and continent where Customer can resell the items purchased from Seller;
  - 14.1.2** The (online) sales via Customer's own channels and/or other platforms;
  - 14.1.3** The method of promotion, including the use of the logo of the (sub)suppliers, as well as the content of advertisements.
- 14.2** All (possible) restrictions imposed by (sub)suppliers on Seller are an integral part of the Agreement.
- 14.3** Customer agrees to indemnify and hold Seller harmless against all liability, damages, reasonable legal costs, reasonable costs and expenses incurred by Seller in connection with any breach of a restriction by Customer.
- 14.4** Furthermore, Customer shall be fined €25.000,00 (twenty-five thousand euros and zero euro cents) per breach and a fine of € 500,00 (five hundred euros and zero euro cents) for each day the breach continues.
- 14.5** The aforementioned penalties do not affect Seller's claims for (full) compensation against Customer as a result of the breach of one or more restrictions.
- 15. Ownership retention**
  - 15.1** All items supplied by the Seller shall remain the property of the Seller until the Purchaser has fulfilled all obligations arising from the agreement(s) concluded with the Seller.
  - 15.2** The Purchaser is not authorized to:
    - 15.2.1** sell, and/or;
    - 15.2.2** process, and/or;
    - 15.2.3** handle,the items falling under ownership retention, unless prior written consent has been granted by the Seller.
  - 15.3** The Purchaser is also not entitled to:
    - 15.3.1** (sub) sell;
    - 15.3.2** lease;
    - 15.3.3** lend;
    - 15.3.4** pledge, or;
    - 15.3.5** hand off as security,in any way, shape, or form, put into service or otherwise bring under the actual control of a third party without the prior written consent of the Seller.
  - 15.4** The Purchaser is obliged to insure the items, as long as they are still subject to ownership retention, against the risks of fire, theft, storm, and water damage, in such a way that the insurance policy includes the provision that the insurance also covers items belonging to third parties.
  - 15.5** During the period of "ownership retention", any and all payments for damages and losses of the items referred to in this article shall replace the relevant items for the benefit of the Seller. The Purchaser is expressly prohibited from assigning any claims under the insurances to his/her insurer as referred to in the preceding clause, to third parties as security. All this in the broadest sense of the word.
  - 15.6** If third parties seize the items delivered under ownership retention, or wish to establish or assert rights to them, the Purchaser is obliged to inform the Seller immediately.
  - 15.7** In the event that the Seller wishes to exercise her rights of ownership as indicated in this article, the Purchaser hereby unconditionally and irrevocably grants permission and authorization to the Seller or a third party designated by the Seller to enter (all) those places where the Seller's properties are located and to take back those items.
  - 15.8** The costs and other (consequential) damages resulting from the retention of the purchased items shall be fully borne by and at the risk of the Purchaser and shall be reimbursed to the Seller upon first request by the Purchaser.
- 16. Suspension and Termination**
  - 16.1** The Seller is entitled to suspend the performance of obligations or to terminate the Agreement if the Purchaser fails to fulfill the (payment) obligations arising from the Agreement, either not at all, not fully, and/or not in a timely manner.
  - 16.2** Furthermore, the Seller is entitled to terminate the existing Agreement between her and the Purchaser, insofar as it has not yet been executed, without judicial intervention, if the Purchaser, does not (timely) or properly fulfill the obligations arising from any Agreement concluded with the Seller.

**16.3** Furthermore, the Seller is entitled to terminate the Agreement without prior notice if circumstances arise which are of such a nature that the performance of the Agreement:

**16.3.1** is impossible, or;

**16.3.2** cannot reasonably be expected according to standards of reasonableness and fairness, or;

**16.3.3** if otherwise circumstances arise of such a nature,

that the unaltered continuation of the Agreement cannot reasonably be expected.

**16.4** If the Agreement is terminated, the Seller's claims against the Purchaser become immediately due and payable.

**16.5** When the Seller suspends the performance of obligations, she retains her rights under the law and Agreement.

**16.6** The Seller always reserves the right to claim damages.

## **17. Information**

**17.1** Seller shall not be liable for any damage resulting from or that may result from any action or omission in response to (incomplete and/or incorrect) information on the website(s) or linked websites.

**17.2** Seller is also not responsible/liable for errors and/or irregularities in the functionality of the website and is not liable for disruptions or unavailability of the website for any reason.

**17.3** Seller does not guarantee the correct and complete transmission of the content of emails sent by or on behalf of Seller, nor for their timely receipt.

## **18. Limitation of (product)liability**

**18.1** Without prejudice to:

(i) the full effect of the generally applicable rules of public order, and;

(ii) the provisions of the Dutch Civil Code mandatorily determined regarding Product Liability (Articles 6:185 BW to 6:193 BW),

with regard to the liability of the Seller, it is stipulated that any obligation of the Seller to compensate the Buyer can only and exclusively consist of fulfilling the Seller's obligation to deliver, without prejudice to the operation of the provisions regarding warranty and advertising as set forth in these terms and conditions. Any other claim for compensation on the part of the Buyer is hereby excluded.

**18.2** If the performance of the Agreement by Seller leads to liability of Seller towards Purchaser or third parties, Seller's liability, unless the damage is caused by intent or gross negligence, is limited to the price invoiced by Seller in connection with the Agreement, with a maximum of the lowest of the following two (2) options, namely:

**18.2.1** €10,000.00 (ten thousand EUROS and zero EUROCENT), or;

**18.2.2** When the damage is covered by insurance, up to the amount of damages that the insurance company will pay out per event per year.

**18.3** Seller is never liable for any consequential damage, indirect damage, loss of profits, or any other similar damages resulting from the partial or complete inability to use the delivered items.

**18.4** Seller is also not liable for and/or obliged to repair damages caused by the use of the items.

**18.5** Seller is never obliged to compensate Purchaser for costs, damages, and interest due to:

(i) personal accidents;

(ii) damage to movable and immovable property;

(iii) the loss of added value to delivered items due to their partial or complete unusability,

(iv) whether directly or indirectly caused by Purchaser or third parties, as well as;

(v) damages of any other kind,

unless Purchaser proves that the damage is due to intent or gross negligence on the part of Seller.

**18.6** Seller is never liable to Purchaser for damages suffered as a result of claims by third parties, including its own employees, arising from any kind of damage caused by the items delivered by Seller to Purchaser. The aforementioned third-party claims also include claims based on legal provisions regarding Product Liability.

- 18.7** All claims by Purchaser due to Seller's failure shall lapse if not reported to Seller in writing and with reasons within two (2) weeks after Purchaser became or could reasonably have become aware of the facts on which they base their claims.

**19. Force Majeure**

- 19.1** Seller is not liable when, due to a force majeure situation, she cannot fulfill her obligations under the Agreement, nor can she than be held to fulfill any obligation if she is hindered by a circumstance not attributable to her fault and for which she is not responsible under the law, legal act, or generally accepted standards.

- 19.2** Force majeure includes, but is not limited to, what is understood about it in law and jurisprudence (non-exhaustive):

- (i) force majeure of Seller's suppliers;
- (ii) the failure to properly fulfill obligations ny suppliers prescribed or recommended by Purchaser to Seller;
- (iii) defects in items, equipment, software, or materials from third parties;
- (iv) government measures;
- (v) power failure;
- (vi) disruption of internet, data network, and telecommunication facilities (for example, due to cybercrime and hacking);
- (vii) natural disasters;
- (viii) war and terrorist attacks;
- (ix) general transportation problems;
- (x) strikes in Seller's company and auxiliary personnel or other companies engaged by Seller in the execution of the Agreement, and;
- (xi) other situations that, in Seller's judgment, are beyond her control and temporarily or permanently prevent the fulfillment of her obligations.

- 19.3** Seller has the right to invoke force majeure if the circumstance preventing (further) performance occurs after Seller should have fulfilled its obligation.

- 19.4** Parties may suspend the obligations under the Agreement during the period of force majeure. If this period lasts longer than two (2) months, either party is entitled to terminate the Agreement without obligation to compensate damages to the other party.

- 19.5** To the extent that Seller has partially fulfilled its obligations under the Agreement at the time of the occurrence of force majeure or will be able to fulfill them partly, and the fulfilled or to be fulfilled part has independent value, Seller is entitled to separately invoice the already fulfilled or to be fulfilled part. Customer is obliged to pay this invoice as if it were a separate Agreement.

**20. Transfer of Risk**

- 20.1** The risk of loss or damage to the Goods subject to the Agreement passes to the Customer at the moment the Goods leave the warehouse of Seller or that of its (sub)suppliers.

**21. Intellectual Property Rights**

- 21.1** All intellectual property rights and copyrights of Seller, including images, drawings, (technical) descriptions, advice, etc., provided by Seller to third parties, are exclusively owned by Seller and are not transferred to Customer.

- 21.2** It is prohibited for any third party, including Customer, to perform acts that may infringe upon any piece on which Seller's intellectual property rights and copyrights rest, including but not limited to: disclose and/or reproduce, modify, or make available to third parties without the explicit prior written consent of Seller. If Customer wishes to make changes to Goods supplied by Seller, Seller must explicitly agree in advance to the proposed changes.

- 21.3** Customer is prohibited from using the Goods on which Seller's intellectual property rights rest in any way other than as agreed upon in the Agreement.

**22. Privacy, Data Processing, and Security**

- 22.1** It is possible that during the execution of the Agreement or the visit to Seller's website(s), personal data may be provided to Seller by any party. The parties concerned consent to the processing of this personal data.

- 22.2** Seller will handle the (personal) data properly and carefully and will process it in accordance with the applicable laws and regulations.

**23. Complaints**

- 23.1 If Customer is not satisfied with Seller's Goods and/or has complaints about the (execution of the) Agreement, Customer is obliged to report these complaints as soon as possible, but no later than fourteen (14) calendar days after the relevant event that led to the complaint. Complaints can be reported via [info@4everyware.nl](mailto:info@4everyware.nl) with the subject "Complaint".
- 23.2 The complaint must be sufficiently substantiated and/or explained by Customer for Seller to be able to consider the complaint.
- 23.3 Seller will respond to the complaint as soon as possible, but no later than fourteen (14) calendar days after receiving the complaint.
- 23.4 Parties will attempt to reach a solution together.

**24. En Bloc Clause**

- 24.1 Seller reserves the right to unilaterally change or supplement these General Terms and Conditions without the consent of the Customer.
- 24.2 Any changes also apply to Agreements that have already been concluded.
- 24.3 In case of a (substantive) change to these General Terms and Conditions, Seller will inform Customer(s) in writing or electronically (via Seller's website or by email) of the (intended) changes to the General Terms and Conditions thirty (30) days before their implementation. Non-substantive changes or changes of minor importance do not need to be communicated to Customer(s) (prior to their implementation).

**25. Applicable Law**

- 25.1 Dutch law applies to every Agreement between Seller and Customer.
- 25.2 The applicability of the (CISG) Vienna Sales Convention is expressly excluded.
- 25.3 The Dutch court has exclusive jurisdiction unless provisions of mandatory law lead to the jurisdiction of the court of another country.
- 25.4 All disputes arising from or in connection with the Agreement between Seller and Customer will be settled by the competent court of the Zeeland-West-Brabant District Court, located in Breda, unless provisions of mandatory law lead to the jurisdiction of another court.

Moergestel, February 22., 2024