

General terms and conditions

Article 1 Definitions

In these general terms and conditions, the following terms shall have the following meanings, unless expressly stated otherwise: Seller: the user of the general terms and conditions, United Works B.V., or a company affiliated with United Works B.V. in a group within the meaning of Article 2:24b of the Dutch Civil Code (each of these companies hereinafter referred to as the 'Seller'); Buyer: the counterparty of the seller; Agreement: the agreement concluded between the seller and buyer.

Article 2

General 2.1 These general terms and conditions apply to every assignment, offer and purchase agreement between the seller and buyer, insofar as no express and written deviation from these general terms and conditions has been made by the parties.

2.2 These general terms and conditions likewise apply to all agreements with the seller, for the performance of which the seller uses the services of third parties.

2.3 The applicability of any general terms and conditions of the buyer is expressly rejected, unless agreed otherwise in writing.

2.4 If the seller concludes agreements with the buyer more than once, these general terms and conditions shall apply to all subsequent agreements, regardless of whether they have been expressly declared applicable.

2.5 If one or more of the provisions in these general terms and conditions are or are declared null and void, in whole or in part, the remaining provisions of these general terms and conditions shall remain fully applicable.

Article 3 Offers, assignments and agreements

3.1 All offers, in whatever form, are non-binding.

3.2 Agreements to which the seller is a party are concluded: a) after both parties have signed an agreement prepared for that purpose; or b) after receipt of written acceptance by the buyer of an offer made by the seller, unless the seller revokes its offer immediately after acceptance by the

buyer; c) in the absence thereof, by the seller commencing the execution of the agreement. For verbal agreements, the invoice shall be deemed to accurately and fully reflect the agreement, unless a complaint is made within 30 days of the invoice date.

3.3 The seller reserves the right to turn down an order/assignment without giving reasons.

3.4 If the acceptance by the buyer deviates from the offer included in the quotation, the seller is not bound by it. The agreement is then not concluded in accordance with this deviating acceptance, unless the seller indicates otherwise.

3.5 The prices in the offers are in euros excluding VAT and other government levies, excluding transport and packaging costs, unless expressly agreed otherwise.

Article 4 Models/images/samples

4.1 If a model, image or sample has been shown to the buyer, it shall be presumed to have been shown for indicative purposes only: the characteristics of the goods to be delivered may deviate from the model, image or sample, unless it is expressly agreed that the item to be delivered will correspond exactly to it.

4.2 The buyer is obliged to carefully examine the samples it receives, whether or not at the request of the seller, for errors, defects, usability and applicability and to communicate its comments in writing to the seller without delay. Approval of the samples by the buyer constitutes acknowledgement that the seller has properly performed the work preceding the samples.

4.3 Each sample produced at the request of the buyer will be charged to the buyer, unless the parties have expressly agreed otherwise.

4.4 The models, images, figures, colours, dimensions, weights, specifications or descriptions included in the catalogues/offer/advertisements/ price list/website are shown for indicative purposes only.

4.5 Minor deviations in quality, dimensions, weight, colour and/or other specifications that cannot technically be avoided or are permitted

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according to standard commercial practice do not constitute a shortcoming on the part of the seller in the fulfilment of its obligations. The seller is entitled to deliver up to 10% more or less than the quantities it has indicated. The actual quantity delivered will be invoiced.

4.6 The drawings, dies, models, templates, moulds, tools, etc. provided by the buyer shall be deemed correct and adequate. The seller is not obliged to do any further research into this.

4.7 The drawings, dies, models, templates, moulds, tools, etc. that are the property of the buyer or have been made available to the seller by or through the buyer shall be returned at the buyer's expense to the buyer after execution of the agreement. The seller is entitled to suspend the return thereof until all claims of the seller (including claims arising from earlier and later agreements) against the counterparty have been paid.

Article 5 Performance of the agreement

5.1 The seller shall perform the agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship, all on the basis of the state of knowledge known at the time in the Netherlands.

5.2 The seller shall determine the manner of execution of the agreement, unless the parties have expressly agreed otherwise in writing.

5.3 If and to the extent that, in the seller's opinion, proper execution of the agreement so requires, the seller has the right to have certain work performed by persons designated by it, including third parties. The applicability of Articles 7:404 and 7:407, paragraph 2 of the Dutch Civil Code is excluded. The buyer shall, at its own expense, ensure that all items and data that the seller indicates are necessary or that the buyer should reasonably understand to be necessary for the execution of the agreement are provided to the seller in good time. If the items and data required for the execution of the agreement are not provided to the seller in time, the seller has the right not to commence execution of the agreement or to suspend execution of the agreement and/or to charge the counterparty for the additional costs resulting from the delay at the usual rates.

5.4 The seller shall not be liable for any damage of any kind resulting from the seller having relied on incorrect and/or incomplete information provided by the buyer.

5.5 The costs incurred by the seller due to non-compliance (or non-timely compliance) with the conditions set out in Article 5.4 shall be borne by the buyer.

5.6 The seller is entitled to make partial deliveries and to invoice partial deliveries separately.

5.7 If the agreement is performed in phases, the seller may suspend execution of those parts that belong to a subsequent phase until the buyer has approved the results of the preceding phase.

5.8 The seller reserves the usual tolerances within the sector with respect to quantities and technical data such as dimensions, weights, colour (fastness), finish of the pile and the like.

5.9 The seller is entitled, with due observance of the usual tolerances within the sector, to deliver more or less than the quantities it has stated. The actual quantity delivered will be invoiced.

Article 6 Delivery

6.1 Delivery of goods shall take place in accordance with the Incoterm 'Ex Works', unless the parties have agreed otherwise.

6.2 If the seller delivers the goods, this shall always be to the delivery address most recently provided by the buyer and known to the seller.

6.3 When, according to the agreed Incoterm or other delivery arrangement, the goods have been made available to the buyer or offered for delivery to the buyer, the buyer must take receipt of the goods. If the buyer does not take receipt of the goods for any reason whatsoever, delivery may take place by constitutum possessorium by means of a written notice to that effect from the seller.

6.4 If the buyer refuses to take delivery or fails to provide the information or instructions necessary for delivery, the seller shall be entitled to store the goods at the expense and risk of the buyer.

6.5 If the buyer has still not accepted delivery of the goods (or had delivery of these accepted) two

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weeks after the agreed delivery time has passed, the buyer shall be in default without the need for a notice of default, while the seller shall be entitled to terminate the agreement and shall be free to sell said goods to third parties. Any costs associated therewith, and any shortfall in the proceeds of the goods, shall be borne by and at the risk of the buyer.

6.6 The seller shall be entitled to deliver the goods cash on delivery.

6.7 If the seller requires data from the buyer in the context of performing the agreement, the delivery period shall commence once the buyer has made this available to the seller.

6.8. If the seller has specified a delivery period, it shall be indicative. A stated delivery time is therefore never a strict deadline. If the period is exceeded, the buyer must give the seller notice of default in writing and allow the seller a reasonable period of time to still fulfil its obligations.

6.9 If changes made by the buyer to the order lead to an increase in the amount of time required for the performance of the agreement, the delivery time shall be extended by the additional time required.

6.10 The seller shall be entitled to charge an advance payment. Delivery to the buyer shall take place after payment of the advance, unless agreed otherwise by the parties.

Article 7 Inspection, complaints

7.1 The buyer shall be obliged to inspect the purchased goods or completed assignment (or have them inspected) at the time of delivery. In doing so, the buyer must in any case check: – whether the correct goods have been delivered; – whether the delivered goods correspond in quantity and quality to what was agreed; – whether, in the case of delivery other than 'Ex Works', damage to the goods has occurred during transport.

7.2 Any visible defects or shortages must be reported in writing by the buyer to the seller within 14 days of delivery. All rights of the buyer in respect of visible defects or shortages shall lapse

if such defects or shortages are not reported in writing to the seller within 14 days of delivery.

7.3 Any non-visible defects must be reported in writing by the buyer to the seller within 14 days after they have been discovered or ought to have reasonably been discovered, but no later than six months after delivery. All rights of the buyer against the seller in respect of non-visible defects or shortages shall lapse if they are not reported in writing to the seller within the aforementioned period of 14 days or six months.

7.4 Indications of quality, structure, size, colour and finish of the pile are only given approximately and are for indicative purposes only. Deviations based on these indications are not of such a nature as to constitute non-conformity, provided that such deviations are technically unavoidable and/or are customary and acceptable within the sector.

7.5 The notice referred to in Articles 7.2 and 7.3 must contain a description of the defect that is as detailed as possible so that the seller is able to respond appropriately. The buyer must give the seller the opportunity to investigate the complaint.

7.6 Damage to the packaging and/or item must be recorded on the delivery note/CMR and also reported in writing to the seller.

7.7 The seller shall process the complaint immediately after it is reported, unless the complaint is not timely in accordance with Articles 7.2 and 7.3.

7.8 If a complaint is made in time, the buyer remains obliged to take receipt of and pay for the purchased goods. If the buyer wishes to return defective goods, this shall only be done with the prior written consent of the seller.

Returned goods must be sent carriage paid, in an undamaged state and in the original packaging.

7.9 Any right of action of the buyer against the seller shall lapse one year after the buyer became aware of such right, unless the buyer has initiated legal proceedings against the seller within that period.

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Article 8 Transfer of risk

8.1 If the buyer refuses to take delivery of the goods, the seller's claims, including transport and storage costs, against the buyer become immediately due and payable.

8.2 The risk of loss or damage to the goods forming the subject of the agreement passes to the buyer at the moment the goods are delivered to the buyer (see Article 6). (In the case of Ex Works, this is the time at which the goods are made available to the buyer.)

Article 9 Force majeure

9.1 The seller shall not be held liable for any shortcoming if it is the result of force majeure.

9.2 In these general terms and conditions, force majeure is understood to include, in addition to its definition in law and jurisprudence, all external causes, whether foreseen or unforeseen, over which the seller has no control, but which prevent the seller from fulfilling its obligations. This includes, among other things, strikes at the seller's company, fire, power/computer failures, traffic congestion, export restrictions, delays in the supply of raw materials by suppliers and a shortage of raw materials and other items or services necessary for the performance of the agreed service.

9.3 For the duration of the force majeure, the parties may suspend their obligations under the agreement. If this period lasts longer than two months, either party shall be entitled to dissolve the agreement without being liable to pay compensation to the other party.

9.4 To the extent that the seller has already partially fulfilled its obligations under the agreement at the time the force majeure occurs, or will be able to do so, and such part has independent value, the seller shall be entitled to invoice that part separately and the buyer shall be obliged to pay this invoice as if it concerned a separate contract.

Article 10 Suspension and dissolution

10.1 The seller's claims against the buyer shall become immediately due and payable without any

notice of default being required, and the seller shall be entitled, without the need for any notice of default, to suspend performance of its obligations under the agreement or to dissolve the agreement, if: – the buyer fails to perform its obligations under the agreement, or does so late or incompletely; – after the conclusion of the agreement, circumstances become known to the seller that give good reason to fear that the buyer will not fulfil its obligations, or will do so late or incompletely; – the buyer undergoes winding-up, files for liquidation (or has a petition for liquidation filed against it), is granted (provisional) suspension of payments, or has assets seized, provided the seizure is not lifted within three months; – at the conclusion of the agreement, the buyer is requested to provide security for the fulfilment of its obligations under the agreement, and such security is not provided or is inadequate.

10.2 Furthermore, the seller is entitled to dissolve the agreement (or have it dissolved) if circumstances arise that are of such a nature that fulfilment of the agreement becomes impossible or can no longer reasonably be demanded, or if other circumstances arise of such a nature that the unchanged continuation of the agreement cannot reasonably be expected.

10.3 If the agreement is dissolved, the seller shall not be liable for damages to the buyer and the dissolution shall release both parties from the obligations affected thereby. To the extent that obligations have already been performed, the parties shall be obliged to undo the services already received.

10.4 If the seller suspends the performance of its obligations, it retains its claims under the law and the agreement.

10.5 The seller always reserves the right to claim compensation for damages.

Article 11 Cancellation

11.1 If the buyer wishes to cancel the agreement after it has been concluded, 10% of the order price (including VAT) shall be charged as cancellation costs, without prejudice to the seller's right to full compensation, including loss of profit.

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11.2 If, in the event of cancellation, the buyer refuses to take delivery of goods already specially produced by the seller for the buyer, the buyer shall be obliged to pay all resulting costs to the seller.

11.3 Cancellation must be done by registered letter.

Article 12 Price and costs

12.1 The seller shall inform the buyer of any intention to increase the price or rate. The seller shall state the extent of the increase and the date on which it will take effect.

Article 13 Payment

13.1 Unless agreed otherwise, payment must be made within 30 days of the invoice date by transfer of the amount due to the seller's bank account in the currency in which the invoice has been issued. Objections to the amount of an invoice shall not suspend the payment obligation.

13.2 If the buyer fails to make payment within the 30-day period, the buyer shall be in default by operation of law, without any notice of default being required. The buyer shall then owe interest of 1% per month or part thereof, unless the statutory interest or the statutory commercial interest is higher, in which case the higher rate shall apply. Interest on the amount due shall be calculated from the moment the buyer is in default until payment of the full amount.

13.3 Payments shall first be applied to reduce costs, then to reduce the interest that has fallen due and finally to reduce the principal amount and the accrued interest.

13.4 The buyer is not entitled to set off, suspend, or apply a discount to any payment.

Article 14 Collection costs

14.1 If the buyer fails to perform its obligations (on time), all reasonable costs incurred to obtain an out-of-court settlement shall be borne by the buyer. In any case, in the event of a monetary claim, the following collection costs shall be payable by the buyer:

Principal up to	Applicable percentage	Maximum
€2,500	15% of the principal	€375 (min. €40)
€5,000	€375 + 10% of (principal - €2,500)	€625
€10,000	€625 + 5% of (principal - €5,000)	€875
€200,000	€875 + 1% of (principal - €10,000)	€2,775
Over €200,000	€2,775 + 0.5% of (principal - €200,000)	€6,775

14.2 If the seller has incurred higher costs that were reasonably necessary, these shall also be eligible for reimbursement. Judicial and enforcement costs shall also be borne by the buyer, to the extent that the buyer is found largely at fault in legal proceedings between the seller and the buyer.

Article 15 Warranty

15.1 The seller warrants that the goods delivered by it shall be free from design and manufacturing defects for a period of six months after delivery, subject to the provisions of Article 7. The seller shall not be liable for any defects that appear thereafter.

15.2 The buyer must investigate the usability and applicability of the purchased goods itself beforehand. The seller does not provide the buyer with any warranty regarding the usability, applicability, colour fastness or composition of or materials used in the goods it produces and shall not be liable for any damage arising therefrom.

Article 16 Liability and indemnity

16.1 The seller shall not be liable for any damage whatsoever if the buyer has failed to comply with the obligations set out in Article 7.1 and has not reported the defects in accordance with the provisions of Article 7.

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16.2 In the event of defects or shortages attributable to the seller for which liability for the resulting damage is not excluded, the buyer shall only be entitled to repair of the goods or supplementation of the shortage if the defects or shortages are unacceptable.

16.3 Notwithstanding the previous paragraph, the seller may choose to replace the goods or to dissolve the agreement in whole or in part, in which case the goods delivered shall be returned in whole or in part, with a (partial) refund of the purchase price. The buyer shall only be entitled to replacement if repair is not possible. Any replaced goods shall become the property of the seller.

16.4 The seller shall not be liable for: – deviations, damage, errors and defects that were not detected in samples approved by the buyer; – damage resulting from the seller relying on incorrect data provided by the buyer; – indirect damage, including consequential loss, loss of profits, missed savings and damage due to business interruption; – damage due to rejected raw materials and dyes caused by changed (post-agreement) or unclear environmental legislation or standards; – unlawful, improper or unprofessional use by the buyer or a third party of the delivered goods; – deviations and damage resulting from changes made to the delivered goods by the buyer or subsequent third parties; – discolouration and shrinkage; – damage resulting from unusability and inapplicability; – damage due to faulty installation; improper handling such as careless treatment, processing, cutting, slicing, damaging and/or use or cleaning.

16.5 Any liability of the seller shall be limited to the maximum amount covered by the seller's insurer. If the seller's insurer does not provide cover in any given case, the seller's liability shall be limited to the invoice amount, or at least that portion of the invoice to which the liability relates.

16.6 If the seller is liable for direct damage, such liability shall be limited to the value of the goods delivered; in the case of contract work, only the added value shall apply.

16.7 The seller shall not be liable for damage resulting from advice given. Advice is always

provided based on the facts and circumstances known to the seller and in consultation with the buyer, whereby the seller always takes the buyer's intentions as the guiding principle.

16.8 The limitations of liability for damage included in these general terms and conditions shall not apply if the damage is due to intent or wilful recklessness on the part of the seller's executive management.

Article 17 Intellectual property and copyrights

17.1 Without prejudice to the provisions of these general terms and conditions, the seller reserves all intellectual and industrial property rights, including but not limited to copyrights, trademark rights, patent rights, design rights and trade name rights. Unless agreed otherwise in writing, the intellectual and industrial property rights in the goods shall rest with the seller, regardless of whether the buyer has been charged for these. This also applies to designs, semi-finished products, packaging, labels, drawings, models, patterns and know-how.

17.2 The buyer is not permitted to make the seller's intellectual property rights available to third parties, allow them to be inspected, copied, used, or to make statements about them, without the seller's written consent. All documents produced by the seller must be returned to the seller immediately upon first request.

17.3 The buyer warrants to the seller that the performance of the agreement does not infringe any third-party industrial or intellectual property rights. The buyer shall indemnify the seller against any third-party claims arising in this regard.

Article 18 Export/transport

18.1 Unless agreed otherwise in writing, payment for export transactions must be made in advance.

18.2 The buyer guarantees that, if an import certificate or licence is required for the import of the goods into the country of destination, such certificate or licence has been or will be obtained prior to shipment.

18.3 If the seller arranges for the transport or storage of the goods that are the subject of the

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agreement, this shall be entirely at the buyer's expense and risk.

18.4 If and insofar as the seller undertakes the transport, storage, shipment, packaging or the like, the manner thereof shall be determined by the seller if no further instruction has been provided by the buyer to the seller. Unless agreed otherwise, the risk shall transfer in accordance with the Incoterm 'Ex Works'.

18.5 Any specific wishes of the buyer regarding transport, shipment or storage shall only be carried out at the buyer's expense.

Article 19 Retention of title

19.1 The goods delivered by the seller shall remain the property of the seller until the buyer has fulfilled all the following obligations under all purchase agreements concluded with the seller: – payment(s) for the goods delivered or to be delivered themselves; – payment(s) for services performed or to be performed by the seller under the purchase agreement(s); – any claims due to non-performance by the buyer of any purchase agreement(s).

19.2 Goods delivered by the seller that fall under the retention of title referred to in paragraph 1 may only be resold or processed in the course of normal business operations, provided the buyer also stipulates a retention of title in this regard. In any case, there is no question of reselling or processing in the context of normal business operations in the event of the buyer's liquidation or suspension of payment. Moreover, the buyer shall not be entitled to pledge the goods or create any other right in respect of them.

19.3 If the buyer fails to fulfil its obligations or there is well-founded reason to believe it will not do so, the seller shall be entitled to retrieve the delivered goods subject to the retention of title referred to in paragraph 1 (or to have them retrieved) from the buyer or third parties holding them on behalf of the buyer. The buyer hereby now grants the seller permission to enter any premises where the seller's property is located. The buyer is also obliged to provide all cooperation for this purpose, under penalty of an immediately due and payable

fine of 10% per day of the amount owed, without notice of default being required.

19.4 After the seller has retrieved the goods subject to retention of title from the buyer, the buyer shall be credited with an amount equal to the purchase price valid on the day of retrieval, but no more than the amount charged to the buyer. The seller may deduct from the amount to be credited any depreciation, for example due to damage or ageing, and any costs incurred by the seller.

19.5 If third parties intend to exercise or assert, or have others exercise or assert, any right in respect of the goods delivered under retention of title, the buyer shall be obliged to notify the seller without delay.

19.6 The buyer undertakes: – to insure the goods delivered under retention of title against damage and loss (including theft) and keep them insured, and to make the policy of such insurance available for inspection; – to pledge all claims of the buyer against insurers relating to goods delivered under retention of title to the seller upon first request; – to pledge to the seller, upon first request, the claims the buyer acquires against its customers upon resale of goods delivered under retention of title by the seller; – to pledge to the seller, upon first request, the goods delivered that have become the property of the buyer through payment, as further security for all claims the seller might have against the buyer; – to mark the goods delivered under retention of title as the property of the seller; to otherwise cooperate with all reasonable measures the seller wishes to take to protect its ownership rights in relation to the goods, provided these do not unreasonably hinder the buyer's normal business operations.

Article 20 Translations of these terms and conditions

Only the Dutch-language version of these terms and conditions is authentic. If these terms and conditions are written in another language, this constitutes a translation of the Dutch text. If there is any discrepancy between the translation and the Dutch text, the Dutch-language version shall prevail. The Dutch version has been filed pursuant

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to Article 23 at the office of the Chamber of Commerce and Industry in Zwolle.

Article 21 Disputes

Any disputes arising from the agreement concluded between the parties shall in the first instance be decided by the court with jurisdiction in the place where the seller is established. Nonetheless, the seller shall have the right to submit the dispute to the competent court in accordance with the law.

Article 22 Applicable law

All agreements between the seller and the buyer shall be governed by Dutch law. The Vienna Sales Convention (CISG) is expressly excluded.

Article 23 Filing

These terms and conditions have been filed with the Chamber of Commerce and Industry.

UnitedWorks B.V.

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