

General conditions of sale and delivery

GENERAL CONDITIONS OF SALE AND DELIVERY OF:

ENDENBURG B.V. IN GOUDA, THE NETHERLANDS

Area of application:

1.1.

Unless agreed otherwise in writing, these General Conditions apply to all offers of and contracts with the private limited company under Dutch law **Endenburg B.V.**

1.2.

Supplements to, amendments to, further arrangements or schemes of or derogation clauses relating to the contract or these General Conditions, whereby **Endenburg B.V.** enters into obligations or concurs with a lower sales price, shall not be considered as having been agreed between the parties as long as they have not been confirmed in writing by **Endenburg B.V.** **Endenburg B.V.** retains the right at all times not to avail itself of the clauses contained in these General Conditions.

1.3.

Only the conditions set out below shall continue to be applicable even if the stationery, the invoices and/or the other documents originating with the other party make reference to the fact or state that its own or other general conditions were applicable. Unless agreed otherwise in writing, the applicability of general conditions or the stipulations of the other party are expressly excluded. If a conflict arises between the conditions set out below and the provisions in the contract, the provisions in the contract shall prevail.

Offers and contract:

2.1.

All offers, inventories and official lists shall always be without any obligation. All offers apply to the period of time as referred to in the offer.

A contract exists or an instruction shall be considered to be accepted – also if a representative or a reseller is involved – only when such has been confirmed in writing by **Endenburg B.V.** or if the contract or the instruction has been executed by **Endenburg B.V.** after the formation of the contract or the receipt of the instruction. If warehouse inventory or other inventory is sold, the invoice may take the place of the written confirmation.

The power of attorney of the representative or reseller does not serve any purpose beyond what is generally acceptable. The representative or reseller may not derogate from these conditions except in accordance with an express, written power of attorney to be granted separately for every contract.

Prices:

3.1.

In the event of delivery within the Netherlands, the prices shall, exclusive of Dutch VAT (BTW), be free to the delivery address to the extent such is accessible by paved roads via normal transport, unless agreed otherwise.

3.2.

In the event goods are delivered for a sum less than € 1000, in derogation from Article 3.1, a fee of € 32,50 shall be levied for freight costs.

3.3.

In all other cases, the prices are ex factory/warehouse, unless agreed otherwise in writing.

3.4.

In all cases, the prices are in euros, exclusive of the due freight, import and export duties, storage costs, security costs, clearance charges, insurance costs, taxes or other levies relating to the contract.

3.5.

If no price has been agreed yet or at all, the prices asked for and rates charged by **Endenburg B.V.** at the time of delivery shall be applied to the other party.

3.6.

All deliveries shall take place at the agreed prices provided that, if materials, packaging, raw materials, semi-finished goods, wages, premiums of any kind, freight, taxes, foreign exchange rates and/or other factors which co-determine the price of the goods experience a change after the conclusion of the contract, **Endenburg B.V.** shall be entitled to adjust its prices accordingly. Such a price adjustment shall not give the other party the right to terminate the contract or have it terminated.

Delivery and risk:

4.1.

The given delivery times are for information purposes and approximate only. If **Endenburg B.V.** is dependent upon further information/data to be issued by the other party, the delivery period shall commence after **Endenburg B.V.** has received that information/those data in full.

Exceeding the given delivery period shall not give the other party the right to terminate the contract, to refuse payment or otherwise not to fulfil its obligations. Similarly, exceeding the delivery period shall not oblige **Endenburg B.V.** to provide any compensation by whatever name and for any reason whatsoever.

4.2.

If goods have not been sold carriage paid, the risk regarding the goods during transport shall be for the expense of the other party as of the moment that the goods have left the company/warehouse of **Endenburg B.V.** During transport, the risk regarding the goods is consequently for the expense of the other party. Unless agreed otherwise, **Endenburg B.V.** shall be free to choose the method of loading, the means of transport and the forwarder/carrier.

4.3.

For goods that have been sold carriage paid, the risk regarding the goods is at the expense of the other party as of the moment of delivery. The term 'delivery' refers to placing the goods under the control of the other party. The goods are also at the risk and expense of the other party as of the moment when the other party fails to perform the acts through which it must cooperate with the delivery. The other party is in default if it fails to accept the goods at the location of delivery immediately after expiry of the agreed delivery period. The other party must make sufficient material and personnel available or have them made available so that the goods can be unloaded quickly and without interruption. Extra costs that have arisen due to negligence on the part of the other party, including, but not limited to, the storage of the goods which have not been taken possession of shall be at the risk and expense of the other party. The date of the bill of lading on which the shipment takes place either by **Endenburg B.V.** or third parties as referred to above – or failing that the time when the shipment is commenced – shall serve as the date of delivery, except for goods that have been taken possession of for which the date on the delivery note shall serve as such.

4.4.

Endenburg B.V. is entitled to charge the other party a fee for the durable packaging of materials, which shall be stated on the invoice. The transport material and/or packaging made available by the other party shall be loaded or filled at the risk and expense of the other party, even if this loading or filling was performed by **Endenburg B.V.** and/or recommendations regarding material and/or packaging have been issued by **Endenburg B.V.** to the other party or activities have been performed by **Endenburg B.V.** to that end. **Endenburg B.V.** is entitled to refuse to load or fill material and packaging that, in its opinion, fails to meet the requirements that must be set in connection with safety and in all reasonableness. In the event of such a refusal, **Endenburg B.V.** shall not be liable for the consequences ensuing from the delay. The third parties as referred to in the previous paragraphs have the same rights and obligations as referred to in this paragraph.

4.5.

The other party is obliged to check the delivered goods immediately after delivery for quantity, quality, specifications and other derogations from that which has been agreed.

4.6

Endenburg B.V. is entitled to deliver an instruction in its entirety or in successive instalments. In the latter case, **Endenburg B.V.** shall be entitled to invoice the other party for each partial delivery separately and to demand payment therefor. If and to the extent a partial shipment is not paid for by the other party, **Endenburg B.V.** shall not be obliged to deliver the next partial shipment; **Endenburg B.V.** shall, however, be entitled, at its discretion, to suspend or to terminate the contract without judicial intervention and without any notice of default from the other party to the extent that the contract has not yet been executed, without prejudice to its other rights, including its right to compensation.

Retention of title:

5.1.

All goods that have been or are yet to be delivered shall remain the exclusive property of **Endenburg B.V.** until all claims that **Endenburg B.V.** has or shall have against the other party have been paid in full, including in any case the claims referred to in Book 3, Section 92(2) of the Dutch Civil Code, as well as claims for compensation due to non-compliance, such as interest and costs.

5.2.

If the other party produces a new good from the goods delivered by **Endenburg B.V.**, in which retention of title is vested, it shall, during that production, act on the instructions of **Endenburg B.V.** and it shall keep the good in its possession for **Endenburg B.V.** The other party shall become the owner only at the moment when the retention of title lapses as a result of all claims of **Endenburg B.V.** having been paid in full.

5.3.

As long as ownership of the goods is not transferred to the other party, the other party may not pledge the goods or grant third parties any rights thereto, except within the normal conduct of its business. The other party undertakes to cooperate on the demand of **Endenburg B.V.** with the establishment of a pledge on the claims that the other party has or shall have by virtue of the onward supply of goods to its customers. To the extent that **Endenburg B.V.** still has claims against the other party other than those referred to in Article 5.1 and **Endenburg B.V.** has delivered goods to the other party in which no retention of title is vested, the other party shall establish a nonpossessory pledge on these goods for the benefit of **Endenburg B.V.** as security for the fulfilment of its obligations, and **Endenburg B.V.** shall accept this nonpossessory pledge. In all aforementioned cases, the other party shall, on the demand of **Endenburg B.V.**, sign a deed establishing the pledge. It shall guarantee that it is authorised to establish a pledge on the goods and that aside from the rights of **Endenburg B.V.**, no rights of pledge or limited rights are vested in the goods.

5.4.

The other party is obliged to store the goods that have been delivered subject to retention of title with due care and as the recognisable property of **Endenburg B.V.** The other party shall treat the goods referred to in this Article with due care. It shall insure the goods against all contingencies on the basis of the invoice value. The other party shall issue the name and address of the insurers and copies of the policies on the demand of **Endenburg B.V.** Further, to the extent that such has not yet arisen by operation of law for the benefit of **Endenburg B.V.**, the other party shall on the demand of **Endenburg B.V.** establish an undisclosed pledge on its claims in respect of the insurer.

5.5.

Endenburg B.V. is entitled to repossess goods that have been delivered subject to retention of title and are still present at the other party if the other party has failed to fulfil its payment obligations or ends up or threatens to end up in financial difficulties. The other party shall at all times grant **Endenburg B.V.** free access to its site(s) and/or building(s) for the inspection of the goods and/or for the purpose of exercising the rights of **Endenburg B.V.**

5.6.

The aforementioned provisions shall not affect the other rights to which **Endenburg B.V.** is entitled.

Complaints:

6.1.

Complaints by whatever name and of any nature whatsoever shall not suspend the payment obligations of the other party. Complaints shall only be accepted by **Endenburg B.V.** provided such are submitted per e-mail or letter, i.e. in any case in writing, to **Endenburg B.V.** within 30 days of delivery of the goods. After the expiry of the aforementioned period of time, that which has been delivered shall be deemed to have been accepted irrevocably and unconditionally by the other party. Any legal action must, at the risk of such a claim lapsing, be brought within one year of the complaint having been made in good time. The burden of proof regarding the complaint having been made in good time lies with the other party. The other party shall be able to prove the accuracy of its claim only on the basis of the goods, while the burden of proof further lies with the other party that these goods are the same as those which have been delivered by **Endenburg B.V.** and that the goods are in the same state as when they left the warehouse of **Endenburg B.V.** Derogations in quality, measurements, colouring, finish and the like that cannot technically be avoided or that are generally permitted by custom cannot constitute a ground for a complaint. Claims shall also be honoured by **Endenburg B.V.** only if it is given the opportunity to check the goods in their original state and in their original packaging. Only goods that have been returned on the instruction of **Endenburg B.V.** and, moreover, whose complaint has been found correct by **Endenburg B.V.** shall be accepted by **Endenburg B.V.** The return shipment is at the risk and expense of the other party.

If a complaint is proved by the other party and found correct by **Endenburg B.V.**, **Endenburg B.V.** may, at its discretion, replace the parts or the articles to which the complaint relates or credit the other party to the exclusion of any other right of the other party to compensation. In respect of complaints, every partial delivery shall be considered to be a separate delivery.

7.1.

Endenburg B.V. shall never (that is to say also not in the event of, for instance, force majeure, failure in the performance of any obligation, an unlawful act or incorrect recommendations) be obliged to pay any compensation and/or penalty by whatever name and for any reason whatsoever. To the extent it is established in court that the aforesaid, full exclusion of liability cannot be upheld, the level of the amount to be paid by **Endenburg B.V.** in respect of the compensation and penalty shall never exceed or be able to exceed the amount for which the public liability insurance taken out by **Endenburg B.V.** in fact gives right to a claim. Furthermore, the level of the amount to be paid by **Endenburg B.V.** in respect of the compensation and penalty shall never exceed or be able to exceed the amount stated on the invoice in respect of the relevant good(s). In all cases, however, it continues to apply that **Endenburg B.V.** shall never be liable for indirect damage/loss and/or consequential damage/loss, including, but not limited to, an interruption of regular business operations of the other party.

Brand and quality:

8.1.

If goods bearing a special quality mark and/or trademark, in particular the trademark '**Endenburg B.V.**', by way of indication on invoices and/or goods, are delivered and invoiced to the other party by **Endenburg B.V.**, the other party shall be obliged, subject to an immediately due and payable penalty, not subject to mitigation, of at least € 5000 EUR for each violation or event, not to offer these goods to third parties except under the indication determined by **Endenburg B.V.**, as well in the case of resellers and/or succession, by whatever name, to impose this obligation to which he is subject, including the aforesaid sanction on third parties, as he shall also oblige third parties in the aforesaid manner to impose this obligation on their resellers and/or successors, by whatever name. The other party shall forfeit to **Endenburg B.V.** the same penalty per violation or event if he and/or its resellers and/or successors, by whatever name, contrary to reality, offers goods under the special quality mark and/or trademark carried by **Endenburg B.V.**, in particular under the trademark '**Endenburg B.V.**'. The indication on the invoice line shall be decisive in this matter. The invoice header is not decisive.

Force majeure:

9.1.

In the event of force majeure, **Endenburg B.V.** shall, at its discretion, be entitled either to suspend the execution of a contract entirely or partially for the duration of circumstances producing the state of force majeure or to terminate the purchase to the extent that such is affected by the circumstances producing the state of force majeure without the other party being entitled to claim any compensation.

9.2.

Among other things, the following shall be considered to be circumstances producing a state of force majeure: strikes, lockouts, fire, water damage, natural disasters or other external contingencies, mobilisation, war, traffic hindrances, blockades, import and export barriers or other government measures, delays in the supply of raw materials or machine parts, a lack of shipping space, a lack of manpower, as well as any circumstance which interrupts normal business operations as a result of which the performance of the contract by **Endenburg B.V.** cannot in all reasonableness be demanded of it.

Payment:

10.1.

Unless agreed otherwise, the sums of money which the other party must pay to **Endenburg B.V.** under any legal relationship (for instance a contract) are immediately due and payable in full upon the formation of the legal relationship. If and to the extent the sums of money are not immediately due and payable in conformity with the foregoing, the sums of money shall be immediately due and payable in full upon partial or full delivery of the goods. To the extent the sums of money which the other party owes **Endenburg B.V.** might not yet be due and payable in conformity with the foregoing, the invoices of **Endenburg B.V.** must in any case be paid within 30 days of the invoice date. Payments go firstly to reduce the costs, then to reduce the interest due and finally to reduce the principal and the accrued interest.

10.2.

In the event the other party fails to fulfil its obligations at all, in a timely manner and/or completely in accordance with the paragraphs referred to above, the other party shall be in default without a notice of default being required. In event of default, as in the event of an application for a moratorium, bankruptcy/insolvency or liquidation of the company of the other party, the other party shall owe **Endenburg B.V.** a monthly interest of 1% on the sums payable to **Endenburg B.V.** or, if such is greater, the other party shall owe the statutory interest due thereon. In that case, **Endenburg B.V.** shall also be entitled to terminate all current contracts with the other party in whole or in part without any judicial intervention being required. The other party is obliged to pay compensation to **Endenburg B.V.** for all costs and damage/loss that have arisen therefrom for **Endenburg B.V.** Furthermore, any credit granted shall lapse and all sums due under the other legal relationships (a contract, for instance) shall be payable forthwith.

10.3.

In the event of default, as well as in the event of the other circumstances referred to in this Article, the extrajudicial and judicial costs in respect of the determination of damage/loss and liability and for the purpose of obtaining a settlement, as well as for the purpose of preventing a limitation of the damage/loss as a result of events in which the liability originates, the interest on the principal and the other costs shall – aside from the principal – be immediately due and payable. Extrajudicial costs shall amount to 15% of the principal with a minimum of € 250 plus disbursements incurred and taxes due.

10.4.

The scope of and the obligation to pay extrajudicial costs shall be evident from the mere fact that Endenburg B.V. has secured the assistance of a third party.

10.5.

The payments to be made by the other party must take place without deduction, discount or suspension, set-off, compensation or discharge by whatever name and for any reason whatsoever. That is to say that the other party expressly waives these rights.

10.6.

If **Endenburg B.V.** has accepted an instruction in whole or in part, the other party shall be obliged – which obligation shall form an integral part of the contract – upon request to furnish security to **Endenburg B.V.** as proof is its creditworthiness either prior to delivery or afterwards for the execution of all its obligations and to the satisfaction of **Endenburg B.V.**, for instance, by way of a cash deposit, provision of a bank guarantee, assignment or grant of a right to a pledge or mortgage. No maximum(s) shall be set and determined by **Endenburg B.V.** in respect of the level, scope and manner of the proper security/securities to be furnished by the other party. The obligation to furnish security/securities referred to in this paragraph also applies to the obligation to pay for damage/loss in the event **Endenburg B.V.** demands compensation from the other party for damage/loss which is the result of the whole or partial termination of the contract that is attributable to the other party.

10.7.

If the other party continues to fail to furnish security/securities, **Endenburg B.V.** shall not be obliged to fulfil its obligations or fulfil them further vis-à-vis the other party under the current contracts, without prejudice to the right of **Endenburg B.V.** to demand the performance of the contract or the payment of the sums due under the contract, as well as to sue for compensation and/or the security/these securities.

Breach of contract and termination:

11.1.

If the other party fails to fulfil its obligations or in the event of its bankruptcy/insolvency, moratorium, placement under guardianship, attachment on goods, discontinuation of activities, transfer or liquidation of its company or any important change in its financial conditions, **Endenburg B.V.** shall be entitled to terminate the contract without judicial intervention and without prejudice to its other rights to compensation.

11.2.

In the circumstances referred to in the first paragraph, **Endenburg B.V.** shall furthermore have the right to suspend further execution of all current contracts between the parties, whereas in these circumstances all outstanding claims of **Endenburg B.V.** shall be payable forthwith, unless the other party is able to furnish the necessary securities.

Applicable law and competent court:

12.1.

All disputes shall be resolved by agreement or, in the event such turns out not to be possible, by the court having jurisdiction *ratione materiae* in the district of The Hague. **Endenburg B.V.** shall, however, also be entitled to submit any disputes to another competent court.

12.2.

All contracts, including the subsequent contracts and these General Conditions, as well as disputes ensuing from such, shall be governed by Dutch law. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, Treaty Series 1981, 184, shall never be applicable.

12.3

If one or more of the provisions of these General Conditions are considered to be voidable at law and otherwise, the other provisions in these General Conditions shall then continue to be unimpaired.