

**General Purchasing Conditions**

of the company with limited liability

VERSTEGEN SPICES & SAUCES

located in Rotterdam

dated 6 March 2019

filed at the registry of the District Court of Rotterdam under number 24/2019

## Article 1 - Definitions

In these purchase conditions, the following terms and phrases are defined as follows:

- a. Client: Verstegen Spices & Sauces B.V. and its affiliates.
- b. Supplier: the party with whom the purchase and delivery of goods or the provision of services has been agreed;
- c. Agreement: the written agreements pertaining to the purchase and delivery of goods and/or services between the Client and the Supplier;
- d. Order: the instruction to deliver goods or provide services, insofar as this instruction has been made or confirmed by the Client in writing;
- e. Delivery: putting of one or several goods into the possession and/or under the control of the Client, as well as the possible installation/assembly/commissioning/mounting thereof;
- f. Parties: the Client and Supplier together.
- g. General Terms and Conditions: the general purchase conditions of the Client as set out in the provisions below.

## Article 2 - Applicability

- 2.1 These General Terms and Conditions apply to all requests, offers, instructions, orders and agreements with regard to the delivery of goods and/or services by the Supplier to the Client.
- 2.2 The Client is at all times entitled to make changes to the General Terms and Conditions.
- 2.3 The Client will notify the Supplier of any change as referred to in the previous paragraph in writing, no later than 14 days before the intended effective date of the changes.
- 2.4 The applicability of the general terms and conditions of the Supplier is hereby explicitly rejected and the General Terms and Conditions are explicitly declared applicable, a copy of which has been made available to the Supplier prior to the conclusion of the Agreement between the parties. The Supplier has signed the General Terms and Conditions in witness of his consent with the contents thereof.
- 2.5 Once a Supplier has been contracted on the basis of these General Terms and Conditions, he agrees to the applicability of these conditions to subsequent agreements between him and the Client.
- 2.6 In the event of an inconsistency, any specific stipulations agreed on prevail over these General Terms and Conditions.
- 2.7 The General Terms and Conditions set aside all previous written or verbal agreements, arrangements or communications between the Parties, including any general terms of sale and/or delivery of the Supplier. Deviations from these General Terms and Conditions are subject to the explicit written confirmation of the Client.
- 2.8 The "Verstegen Spices & Sauces B.V. Delivery Instructions", form an integrated part of these General Terms and Conditions, the text of which instructions is attached to these conditions as an appendix.

## Article 3 - Formation

- 3.1 The Agreement is formed by the Supplier signing the jointly formulated product specifications.
- 3.2 In addition to the explicit acceptance, an Order by the Client is deemed to have been accepted by the Supplier if the Supplier does not inform the Client within 10 days that the order in question has not been accepted, as well as in the event that the Supplier proceeds to deliver to the Client. Acceptance by the Supplier of an Order of the Client also constitutes acceptance of these conditions as part of the

- purchase agreement.
- 3.3 Requests for quotations made by the Client are entirely free from obligation. Cost estimates made by the Supplier before the Agreement is formed cannot be charged separately, also if no Agreement is formed.
- 3.4 If the performance of the Agreement includes the use of drawings, specifications, instructions, inspection regulations, etc. made available or approved of by the Client, they form an integrated part of the Agreement.

#### **Article 4 - Prices**

- 4.1 All prices are exclusive of VAT. Furthermore, the price applies to goods to be delivered to the Client free domicile or free warehouse of the Client, or a delivery address given by the Client and including all costs such as transport costs, insurance, packaging, exchange rate risk, import duties, etc.
- 4.2 General price increases and price increases as a result of contract extras or additional deliveries can only be charged to the Client if the Client has explicitly accepted them in writing in advance.
- 4.3 Goods delivered that are faulty, causing the Supplier to undertake more work and/or incur more costs than upon conclusion of the Agreement but which could be anticipated, will never form a reason to increase the agreed price or prices.

#### **Article 5 - Packaging**

- 5.1 Insofar as necessary, the goods must be properly packaged and marked in accordance with the instructions of the Client and they must reach their destination in a good condition when using standard transport. The Supplier is liable for any damage caused by insufficient or unsuitable packaging.
- 5.2 The Client is at all times entitled to return packaging material to the Supplier or to demand that the Supplier takes packaging material back.
- 5.3 Packaging material is returned to the dispatch address of the Supplier at his expense and risk.
- 5.4 The processing or destruction of packaging material is the responsibility of the Supplier. If packaging material is processed or destroyed at the request of the Supplier, it will be at his expense and risk.

#### **Article 6 - Delivery**

- 6.1 Delivery is made exclusively on the agreed INCO terms. Unless otherwise agreed in writing, delivery is made free domicile or free warehouse of the Client (Delivery Duty Paid, or DDP) with an accompanying consignment note. The Supplier has to follow the regulations and instructions as applicable at the specified delivery address, as laid down further in the enclosed Delivery Instruction.
- 6.2 The goods delivered must be unloaded and stored in accordance with the instructions of the Client. Breakage and/or damage caused during loading, transport and/or unloading or stacking are at the expense of the Supplier, even if the breakage and/or damage is detected later unless the Supplier demonstrates that the damage was caused by the intention or gross negligence of the Client.
- 6.3 The delivery date agreed in writing is a final deadline. As soon as the Supplier knows or should know that Delivery will not be made (in time) or not be made properly, the Supplier must immediately notify the Client thereof, stating the reasons for this failure. This is without prejudice to any consequences of exceeding the delivery time under the Agreement or statutory provisions.
- 6.4 In the event of late delivery by the Supplier, except in the event of force majeure on the part of the Supplier as described further in Article 20, the Client, at his

discretion:

- a. is entitled to dissolve the agreement without further notice of default and/or judicial intervention, in the course of which the Client is given the opportunity to demand (full) compensation. The Client will never be liable for any damage arising from this for the Supplier;
  - b. is entitled to impose a fine of half a percent (0.5%) of the value of the instruction for every week that the Supplier is late in completing the instruction or delivering the goods sold to the Client, subject to a notice of default. This is subject to a limit of 5% of the total purchase price or contract price, all this without prejudice to the Client's right to compensation of all relevant costs, damage and interest suffered by the Client in this respect.
- 6.5 In the event that the Client is in all reasonableness unable to take possession of the goods presented for delivery, the Supplier, at his expense and risk, will store the goods for a term yet to be specified, in such a way that the correct and consistent composition of the goods is guaranteed and that the required level of quality is maintained. The Client excludes all liability resulting from not being able to take possession of the goods presented for delivery.
- 6.6 Delivery in excess or deficit of the agreed quantity and Delivery made more than 7 days before the agreed delivery time lapses is permitted subject to the prior written consent of the Client.  
Earlier delivery and/or execution does not change the agreed payment terms. The risk with regard to goods delivered in excess and stored at the Client remains vested in the Supplier until an agreement is reached about what should happen to those goods. All costs in connection with the storage of more than the agreed quantity are payable by the Supplier unless otherwise agreed in writing.
- 6.7 In the case of the delivery of bulk goods, the quantity and quality delivered will be assessed on the basis of the measurements by the Client, using the calibrated measuring bridges appointed by him and on the basis of calibration tables. Inspecting, checking and/or testing goods neither implies the delivery nor the purchase thereof.
- 6.8 On the Client's demand, the Supplier will be obliged to provide a production or construction schedule and/or to cooperate in progress monitoring on account of the Client.
- 6.9 Delivery is deemed complete only if that which has been agreed has been delivered in its entirety and in accordance with the Agreement, at the location stipulated by the Client.
- 6.10 The goods to be delivered and/or services to be provided are at the full expense and risk of the Supplier until Delivery is complete.

## **Article 7 - Changes**

- 7.1 Without the written consent or a written request from the Client, the Supplier will refrain from making any changes to the specifications given by the Client. If performance in accordance with these specifications is not possible, the Client will not change that consent on unreasonable grounds.
- 7.2 The Client is at all times entitled to change the quantity and/or quality of the goods and/or services to be supplied in consultation with the Suppliers. Any changes must be agreed in writing.
- 7.3 Changes and additions will, in principle, never result in an increase of the agreed price or an extension of the agreed delivery time.
- 7.4 If in the opinion of the Client a change will affect the agreed price and/or delivery date, he is obliged - before implementing the change - to notify the Client thereof in writing as soon as possible yet no later than 2 working days after the notification of the required change. In the event that these consequences for the price and/or

delivery date are unreasonable in the opinion of the Client, the Parties will consult each other about this.

- 7.5 In this case, a change refers to a change to the products, the machines and/or the building of the Supplier.

## **Article 8 - Quality and liability**

- 8.1 The Supplier guarantees that the purchased goods comply in all aspects with the agreement and with the statutory requirements and government regulations as they applied at the time of delivery and that they are otherwise suitable for their intended purpose. The Supplier ensures that, among other things, all components, equipment, tools, spare parts, user manuals and instruction books required for the realisation of their intended purpose are included in the delivery.
- 8.2 Without the prior written consent of the Client, the Supplier is not permitted to deliver goods that deviate from the Agreement.
- 8.3 The Client is entitled but is not obliged to inspect the purchased goods or some of them prior and/or after delivery. The Supplier will fully cooperate in this and he will grant the Client access to the location or locations where the purchased goods are kept.
- 8.4 In the case of a rejection, the Client will notify the Supplier thereof in writing as soon as possible. This notification will serve as a notice of default. In this case, the Client is not entitled:
- a. to return the goods and to also demand re-delivery, subject to compensation or otherwise. The goods are returned at the full expense and risk of the Supplier.
  - b. to demand that the faults identified in the work carried out are remedied, subject to compensation or otherwise;
  - c. to keep the goods until the Supplier has provided further instructions on how to process the rejected goods;
  - d. to fully or partially dissolve the Agreement, subject to compensation or otherwise, without any further notice of default or legal intervention being required. The related costs will always be payable by the Supplier.
- 8.5 If the purchased goods are faulty or if the Supplier (otherwise) fails to fulfil his obligations under the Agreement, he is liable towards the Client for all resulting damage. In this context, Supplier also refers to legal entities or persons the Supplier is liable for. If the Supplier fails to fulfil his obligations under the Agreement, the Client is entitled to fully or partially dissolve the Agreement, without prejudice to his right to compensation.
- 8.6 The Client is not liable for damage suffered by the Supplier and the Supplier's personnel unless such damage can be attributed to the intent or wilful recklessness of the Client or his managerial subordinates.
- 8.7 The Client is not liable to pay third parties compensation for damage that is the result of the purchased goods being faulty or the Supplier (otherwise) failing to fulfil his obligations under the Agreement. In this case, third parties also include the personnel of the Client and legal entities or persons working on the instructions of the Client.
- 8.8 Without prejudice to the Supplier's liability or responsibility by virtue of his obligations and/or responsibilities ensuing from Article 9.1, the Supplier is liable for all damage suffered by the Client or by third parties as a result of a faulty product as a result of which it does not offer the safety, quality, functionality and performances one should and could expect from that product.
- 8.9 The Supplier is liable for all damage, consequential damage included, suffered by the Client or by third parties as a result of the acts or omissions of the Supplier himself, his personnel or those involved in the performance of the Agreement on behalf of the Supplier.

- 8.10 Unless agreed otherwise, the Supplier must test and check the composition and quality of raw materials, semi-finished products, packaging and other items for processing or use supplied by the Client, and report all irregularities to the Client at least 3 working days before processing or use.
- 8.11 Whether or not an inspection or quality control is carried out will never affect any obligation or liability of the Supplier.
- 8.12 The Supplier will take out adequate insurance against the liability referred to in this article and if so desired, he will allow the Client to inspect the policy documents. Furthermore, the Supplier will take out insurance for all goods he has received from the Client by virtue of the Agreement concluded with the Client against all types of damage that may affect the goods for as long as they are held by him. The Supplier will have a right of recourse against the Client in that respect. The Supplier will allow the Client to inspect all relevant policy documents on demand. He will make copies of the policy documents available to the Client on the latter's demand.

## **Article 9 - Warranty**

- 9.1 The Supplier guarantees that the goods to be delivered (and the corresponding documentation):
- a. comply with the agreed specifications, descriptions, properties, requirements, as well as the quality standards applied by the Client;
  - b. are suitable for their intended use and if no specific agreements are made on the matter, that they comply with the specifications, properties and requirements generally attached to such goods or that are customary,
- 9.2 The Supplier guarantees that the goods correspond with samples, models, annexes and drawings made available by the Supplier and/or production or confirmation samples approved by the Client.
- 9.3 The Supplier guarantees that the goods and the corresponding documentation comply with all agreed arrangements with the Client and the relevant statutory provisions in the country of destination with regard to, among other things, quality, health, safety and the environment.
- 9.4 The Supplier guarantees that the goods are of good and constant quality at all times and that they are free from construction, material and manufacturing errors, as well as from errors or faults in the nature, composition, content or formula.
- 9.5 The Supplier cooperates in any requested inspections, audits and tests and he will provide the necessary documentation and information at his own expense. The Supplier will promptly notify the Client of the time at which an inspection, audit and/or test can take place. The Supplier is entitled to attend them. The costs of the inspection, audit and/or test will be payable by the Client. If additional costs are incurred as a result of the inspection, audit and/or test, the Client is entitled to pass them on to the Supplier. If the goods are fully or partially rejected during an inspection, audit and/or test before, during or after Delivery, the Client will notify the Supplier thereof (in writing).
- 9.6 Apart from conducting periodic inspections, audits and tests, the Client is entitled to conduct an audit if it appears that the Supplier's product constitutes or may constitute a food safety risk.
- 9.7 The warranty period is 12 months after delivery unless explicitly agreed otherwise in writing. After the expiry of the applicable warranty period, the Supplier will remain liable for hidden defects for a period of 5 years. Hidden defects are defects that the Client could in all reasonableness not have discovered when the goods were inspected. Raw materials and consumables are subject to a warranty term of 60 days.
- 9.8 The Supplier guarantees the import, export and transit of the goods to be delivered to the specified (final) destination.
- 9.9 The Supplier at all times holds a safety certificate (SCC certificate) for all service-

related activities undertaken at the Client's premises. Before the services commence, this SCC certificate must be presented to the Client.

- 9.10 In the event that the Supplier fails to fulfil one of his obligations, he is obliged to compensate the Client for all related damage, which includes consequential damage and damage suffered by third parties. Damage is also taken to mean any judicial and extrajudicial costs incurred and to be incurred by the Client, set at 15% of the purchase price, in connection with the work in order to demand or realise fulfilment.

#### **Article 10 - Documentation**

- 10.1 The Supplier is obliged to provide the Client with associated documentation prior to or at the time of Delivery, failing which the Client may suspend payment until he has received this documentation.
- 10.2 The Client is free to use such documentation, including the multiplication thereof for internal use.
- 10.3 The Supplier is obliged to state the country of origin and all ingredients of the product on the specification.

#### **Article 11 - Payment**

- 11.1 The invoice, including VAT, must be paid within 45 days of delivery and approval of the goods delivered or services provided and receipt of the invoice. If the Client pays an invoice within 10 days of receiving it, he is entitled to a payment discount of 3% which he can set off against his payment immediately.
- 11.2 In the case of partial deliveries or when services are provided over a longer period of time, the Supplier is obliged to submit his final bill to the Client within 4 weeks of the final delivery. Deliveries already made and approved will be paid on the understanding that payment thereof, in the case of an imputable failure of the Supplier, is made minus damage and costs suffered and/or to be suffered by the Client as a result of an imputable failure.
- 11.3 Payment by the Client does not in any way constitute a waiver of right and it does not discharge the Supplier from any warranty and/or liability by virtue of the Agreement or the law.
- 11.4 The Supplier is obliged to state the order and product numbers and a description on the invoices to be sent to the Client. Deviations from this rule may lead to delays in payment. Such delays are at the expense and risk of the Supplier. The invoices must be accompanied by the waybills and packing slips signed in agreement by the Client. Invoices that do not comply with the foregoing will be returned without being processed.
- 11.5 The Client is entitled to demand that, in order to secure the fulfilment of the obligations of the Supplier, the latter furnishes an unconditional and irrevocable bank guarantee at his own expense through a bank that is deemed acceptable by the Client.
- 11.6 The Client is entitled to reduce the amount of the invoice with amounts owed to the Client by the Supplier.
- 11.7 The Client is entitled to suspend payments if the Supplier fails to fulfil his obligations.
- 11.8 The Client is at all times entitled to set off any amount he owes the Supplier against the amounts owed to the Client by the Supplier or his affiliated companies, due or otherwise. The Supplier is entitled to any set-off only with the prior written consent of the Client.

## **Article 12 - Ownership**

- 12.1 Ownership of the goods to be delivered by the Supplier will pass to the Client at the time of Delivery. As soon as ownership of the goods has transferred to the Client, he is allowed to sell, encumber or pledge the goods or make them otherwise available to third parties.
- 12.2 The Supplier is obliged to identify the goods held by him for the Client. The Supplier will mark these goods in such a way that they are recognisable as the property of the Client.

## **Article 13 - Industrial and Intellectual Property**

- 13.1 The Supplier guarantees that the free and uninterrupted use of the goods delivered does not infringe any intellectual or industrial property right. The Supplier indemnifies the Client against third-party claims and pays the damage and costs incurred by the Client in this respect.
- 13.2 Specifications, formulas, methods, designs, drawings, models, catchphrases, texts, descriptions, artistic performances, artwork, both original and edits thereof, data, including all changes thereto and other publicity material, etc. provided by the Client or which are produced by or on behalf of the Supplier on the instruction of the Client or in connection therewith and the intellectual and industrial property rights with regard to this will be vested exclusively in the Client, who will also be designated as the manufacturer and designer, regardless of whether all this is charged to the Client separately. The Supplier will furthermore do all that is required in order to entitle the Client as referred to above.
- 13.3 The Supplier is entitled to use the information provided by the Client, but only within the framework of the Agreement. This information is and, therefore, remains the Client's property.

## **Article 14 – Confidentiality**

- 14.1 Subject to a different statutory obligation, the Supplier is obliged to treat all information from the Client, disclosed or developed within the framework of the execution of the Agreement, as private and confidential and not to publish it without the Client's written consent. The Supplier is not permitted to use the aforementioned information for his own use or third-party use, insofar as this information was not already public knowledge or has become public knowledge through the actions of the Supplier.
- 14.2 The Supplier is obliged to keep everything disclosed to him about the Client within the framework of a request or offer, an order and/or the execution of the Agreement secret and to impose this rule on his own members of staff and third parties engaged within the framework of an offer to be made, an order to be assessed and the performance of an Agreement.  
The provisions of this article apply particularly but not only to data and information with regard to products, systems and processes developed by the Supplier in collaboration with or on the instructions of the Client.
- 14.3 Without prior written consent, the Supplier will not use the name, brands and trade names of the Client and his intellectual property rights in advertising, other publications or in any other way.
- 14.4 When the provisions of paragraph 1 and/or 2 and/or 3 of this article are violated, the Client will impose an immediately due and payable fine of €50,000 on the Supplier, without prejudice to the Client's right to full compensation of any damage he has suffered. Furthermore, in the case of repeated violations as those referred to in the

previous sentence, the Supplier will owe an immediately due and payable fine of €50,000 for each time he violates the duty of confidentiality referred to in the previous paragraphs of this article. The Supplier will pay the fine to the Client immediately upon discovery of the violation and the notification thereof.

14.5 Following the termination of the Agreement, the obligations under this article remain in force.

## Article 15 - Corporate Social Responsibility

15.1 The Client demands that the Supplier pays attention to corporate social responsibility when manufacturing products to be sold and supplied to the Client. This means the Supplier pays attention to man, the environment and society.

15.2 With regard to man, the Client may demand the following of the Supplier:

- a. The Supplier respects the Universal Declaration of Human Rights of the United Nations and he acknowledges his own responsibility towards the members of staff and the communities in which the Supplier is active;
- b. The Supplier offers his members of staff terms and conditions of employment which, in any case, comply with all (local) legislation in the field of (monetary) payments and working hours, including the statutory requirements with regard to the minimum wage, payment of overtime, sick leave, item payment and other compensation schemes;
- c. The Supplier guarantees that all members of staff employed by him and/or employed by third parties hired by him work in accordance with the maximum working days and working hours laid down in local legislation. Members of staff cannot work more than 60 hours per week, including overtime. Members of staff have to take at least one day off every seven calendar days;
- d. The Supplier offers his members of staff a healthy and safe working environment and he aims to continuously improve safety. The Supplier ensures that members of staff have the correct personal protective equipment and that they have completed the correct safety training;
- e. The Supplier offers members of staff equal opportunities, regardless of race, skin colour, gender, nationality, religion, ethnic origins or other distinguishing characteristics. The Supplier does not accept any form of discrimination or intimidation by or aimed at any of his members of staff;
- f. Work for which a child is too young and/or which is likely to damage its physical and mental development, deprives it of an education and the possibility to learn, to demand it to leave schools early or compels it to combine education with long and strenuous work (**child labour**) is banned as stipulated by the Convention of the United Nations and/or by applicable legislation.
- g. The Client demands that the Supplier holds an investigation into child labour at his own supplier and/or other third parties. The report must be submitted to the Client and the Supplier will take any measures required if a third party proves to be guilty of child labour.
- h. Forced labour, exploitation and excessive disciplinary measures are forbidden; all forms of forced labour such as forced board and lodging against payment, confiscating identification documents of members of staff when they commence their work is considered forced labour. The use of physical punishment, mental or physical coercion and verbal abuse is forbidden.
- i. If the Supplier commits the offences referred to in Article 15.2(a) to (f) and (h), the Client is entitled to stop the collaboration with the Supplier with immediate effect.

15.3 With regard to the environment, the Client may demand the following of the Supplier:

- a. The Supplier has to be aware of the environmental implications of his business operations and he continuously looks for ways to minimise the impact of his

- business operations, production and products on the environment. The Supplier holds all of the required local permits and also has a demonstrable environmental policy in place such as laid down in the form of ISO14001, EMAS, CO2 performance ladder or a similar environmental management system;
- b. The Supplier aims to prevent or recycle waste to the greatest possible extent. If this is not possible, waste is removed in an environmentally-friendly way and in accordance with prevailing legislation;
  - c. On the Client's demand, the Supplier presents a list of measures taken by him in order to reduce the following:
    - i. Energy consumption;
    - ii. Water consumption;
    - iii. Harmful emissions;
    - iv. CO2 emissions;
- 15.4 With regard to society, the Client may demand the following of the Supplier:
- a. The Supplier is obliged to comply with all relevant anti-corruption and anti-bribery legislation.
  - b. The Supplier is obliged to refrain from any form of corruption, bribery, extortion and embezzlement. Bribery is taken to mean but is not limited to giving everyone business gifts.
  - c. The Client is looking for ethically responsible behaviour within the chain in all aspects and he asks the same from the Supplier.
- 15.5 The Client wants to be transparent and he asks the same of the Supplier. For that reason, the Client also demands an insight into the supply chain.

#### **Article 16 - Transfer**

- 16.1 The Supplier can transfer his obligations under the Agreement or a part thereof to a third party only with the prior written consent of the Client.
- 16.2 A transfer of the obligations under the Agreement to a third party and/or the performance of (part of) the Agreement by a third party does not affect the Supplier's liability to fulfil the Agreement correctly.

#### **Article 17 - Non-assignment clause**

Without the prior written consent of the Client, the Supplier is not entitled to assign his claims against the Client to third parties and/or to encumber them with a restricted right or to assign his obligations under the Agreement to a third party.

#### **Article 18 - Dissolution, Termination**

- 18.1 In the following instances, the Supplier will be in default by operation of law and the Client will be entitled, without any notice of default or judicial intervention being required, to fully or partially dissolve the Agreement unilaterally by means of an extrajudicial declaration to that end, without prejudice to his right to compensation:
- a. if the Supplier fails to fulfil one or more of his contractual obligations or fails to do so in time after being given 14 days to do so, in writing.
  - b. if the Supplier applies for liquidation or a moratorium or if he is placed under guardianship pursuant to a statutory provision;
  - c. if the Supplier is declared insolvent or is granted a moratorium;
  - d. if one or more of the goods of the Supplier are put under administration;
  - e. if the Supplier fully or partially transfers (parts of) his company or the control thereof, if he liquidates/discontinues all or parts of his company or otherwise discontinues his business operations;
  - f. if the goods of the Supplier, or a part thereof, are seized before judgment

- or seized under a warrant of execution.
- 18.2 Without prejudice to the provisions of the previous paragraph, the Client is entitled to demand compensation on top of dissolution.
- 18.3 If the Client exercises his right referred to in the previous paragraph, the Supplier must be notified of the dissolution of the Agreement and the reason thereof in writing.
- 18.4 In the event of a (partial) dissolution of the Agreement, the Client, without prejudice to his right to compensation and costs, will be entitled, at his discretion:
- a. to return any goods already delivered but not or no longer useful to the Supplier at the latter's expense and to demand repayment or a set-off of any payments already made for these goods. The Supplier is obliged to refund the payments made under the Agreement to the Client without delay, minus the value of the goods kept by the Client;
  - b. to refuse the goods presented for Delivery after all, without being in (creditor's) default;
  - c. to have the Agreement performed by himself or by third parties, possibly after a written notification, using the goods delivered by the Supplier and the materials, etc. used by the Supplier, at a reasonable price to be agreed on afterwards or not. Apart from the cases referred to, the Client is entitled to dissolve the Agreement with immediate effect by means of a written statement against payment of the pro rata price of goods or services supplied to date, and if the Supplier proves to have consequently suffered damage or a loss plus a maximum surcharge of 10% of the remaining agreed price in compensation for this damage and loss (lost profits included). Every claim from the Supplier for further, additional or replacement compensation is excluded.
- 18.5 The Client is at all times entitled to unilaterally terminate the Agreement in the interim by means of a written notification to the Supplier. Immediately after receiving the written notification, the Supplier must cease the performance of the Agreement. The Client and the Supplier will consult each other about the consequences of such termination.

#### **Article 19 - Rights of Suspension and Compensation**

- 19.1 The Supplier declares to waive his rights to suspend his obligations under the Agreement if and insofar as the timely performance of the instruction for which the Deliveries are intended, is delayed as a result.
- 19.2 The Client is entitled to suspend his payment obligations if the Supplier fails to fulfil his obligations pursuant to the Agreement or the law or if he is at risk of doing so, regardless of whether this failure can be attributed to the Supplier.
- 19.3 If the Client on the basis of circumstances known to him at that time, in all reasonableness believed that he may suspend his obligations, the Client will not be obliged to pay the Supplier any compensation if in retrospect, it becomes apparent that the Client invoking his right of suspension proved to be legally invalid.
- 19.4 The Client is entitled to set off amounts owed or payable by virtue of the Agreement against any amounts payable to him by the Supplier or payable to the Supplier by himself.

#### **Article 20 – Force majeure**

- 20.1 The Client and the Supplier are not liable for shortcomings in the compliance with or the performance of the Agreement as a result of force majeure.
- 20.2 Within the meaning of this article, force majeure refers to and includes all events that result in a failure to fulfil any obligation under the Agreement by a party but which cannot in all reasonableness be attributed to that party nor will they be at the expense of that party pursuant to the law or public opinion.

- 20.3 Furthermore, the following circumstances are considered force majeure within the meaning of this article:
- a. extreme weather conditions;
  - b. water damage;
  - c. floods;
  - d. riots, war, imminent war or violence of war;
  - e. terrorism;
  - f. vandalism;
  - g. disruptions in the power supply;
  - h. government measures;
  - i. full or partial job strikes at the company/in the sector;
  - j. actions by interest groups;
  - k. factory sit-ins;
  - l. a lack of raw materials;
  - m. transport obstructions;
  - n. exclusions, loss of or damage to goods during transport;
  - o. export and import bans;
  - p. fire in the business premises or business buildings of a party;
  - q. disruptions and accidents at the business or means of transport.

Additionally, the following grounds of force majeure apply to the Client:

- r. in the event of a so-called hard Brexit, without an agreement about the relationship between Great Britain and the European Union;
  - s. if Brexit goes ahead with an agreement about the relationship between Great Britain and the European Union, which agreement contains unacceptable clauses or conditions, which will be at the discretion of the Client.
- 20.4 Within a reasonable term of having learned of them, the parties will report circumstances or events that have led to a situation of force majeure as referred to in Articles 20.2 and 20.3 (a) to (q). In the case of such a situation of force majeure, the party invoking it will provide documentary evidence thereof and the other party will be entitled to declare the Agreement dissolved by means of a written declaration. In that case, the other party is not entitled to any compensation.
- 20.5 In the event of force majeure within the meaning of Articles 20.3(r) and 20.3(s), the Client is at his own discretion and according to his own insights entitled to renegotiate the Agreement without a prior notice of default or legal intervention being required. If the parties do not reach an agreement during the renegotiations, the Client is entitled to suspend or change the Agreement until the extraordinary circumstances have ended and the Client will be obliged to pay any performance already delivered. The Supplier is not entitled to any form of compensation.
- 20.6 Furthermore, in the event of force majeure within the meaning of Articles 20.3(r) and 20.3(s), the Client is at his own discretion and according to his own insights entitled to immediately terminate the Agreement by means of a written statement of dissolution without a prior notice of default or legal intervention being required and the Client will be obliged to pay any performance already delivered. The Supplier is not entitled to any form of compensation.

## **Article 21 - Publicity/Authorisation**

- 21.1 In the event that complaints from buyers of the Client's goods lead to any type of publicity, the Supplier hereby irrevocably and unconditionally authorises the Client to take suitable action in the Supplier's name and at his expense in order to prevent or reduce such publicity.

## **Article 22 - Disputes and Applicable Law**

- 22.1 All disputes between the Parties, including those considered as such by only a single party, will to the greatest possible extent be settled by agreement. This agreement does not preclude the Client's right to submit the dispute to the competent court immediately and at a time of his choosing.
- 22.2 If the Parties fail to come to a solution, the disputes between the Parties will be settled exclusively by the competent court in Rotterdam.
- 22.3 All relationships between the Client and the Supplier covered by these conditions are governed by Dutch law. The applicability of the Vienna Sales Convention is excluded.

## **Article 23 - Conversion**

If and insofar as any provision of these General Terms and Conditions cannot be invoked on the grounds of reasonableness and fairness or the unreasonably onerous character thereof, that provision will be given a meaning which, in terms of content and purport, is as close as possible, so that it *can* be invoked. The invalidity of a provision will not affect the other provisions of the General Terms and Conditions.

## **Article 24 - Dutch text**

The Dutch text of these General Terms and Conditions prevails over any translations thereof.