



Registered at Baarle-Nassau.

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ARTICLE 1: APPLICABILITY OF THESE GENERAL TERMS AND CONDITIONS

The following General Terms and Conditions apply to all agreements – including future agreements – under which **Mardenkro B.V.**, a private limited liability company, having its registered office in Baarle Nassau, the Netherlands, referred to below as '**Mardenkro**', sells goods and/or provides services on any legal basis whatsoever, to all statements to be made in that context, and to all offers and order confirmations. **Mardenkro**'s other party will be referred to below as the 'Buyer'. These General Terms and Conditions may be invoked against the Buyer by any party that is engaged by **Mardenkro** in the context of the performance of an agreement. The applicability of any General Terms and Conditions that the Buyer at any time presents to **Mardenkro** is hereby expressly excluded. If one or more provisions of these General Terms and Conditions prove to be null and void or are nullified, the other provisions of these General Terms and Conditions will continue to apply in full. **Mardenkro** and the Buyer will in that case consult in order to agree on new provisions to replace the null and void or nullified provisions, in which respect the purpose and scope of the original provisions will be observed to the extent possible. If and to the extent that proper performance of the agreement so requires, **Mardenkro** will have the right to have certain activities performed by third parties.

ARTICLE 2: CONCLUSION OF AN AGREEMENT, BREACH BY THE BUYER, AND CONTENT OF THE AGREEMENT

1. All offers made by **Mardenkro** are without engagement. They will be valid for a period of 14 days after the date of the offer, unless otherwise stated. The offer will in any event contain a complete description of the goods to be delivered, the work to be performed and the manner of payment. The agreement will have been concluded if and as soon as **Mardenkro** confirms to the Buyer in writing that the Buyer has approved the offer. If the acceptance by the Buyer varies (or varies in minor respects) from the provisions of the offer, only the provisions of the offer will apply, and **Mardenkro** will not be bound by the variations from the offer, unless **Mardenkro** states otherwise.
2. The Buyer (or prospective Buyer) will bear the risk of any incorrect conveyance of information. The Buyer must ensure that all the information of which **Mardenkro** indicates that it is required or of which the Buyer should reasonably understand that it is required for the performance of the agreement is provided to **Mardenkro** in time. If that information has not been provided to **Mardenkro** in time, **Mardenkro** will have the right to suspend the performance of the agreement. **Mardenkro** will not be liable for any damage or costs whatsoever resulting from the use made by it of incorrect and/or incomplete information on the delivery provided by the Seller.
3. Prices stated by **Mardenkro** in its price lists and advertisements are indicative only and will not bind **Mardenkro**. They will, however, be binding if **Mardenkro** makes an offer to a specific Buyer that is intended for it. **Mardenkro** will in any event at all times have the right to correct obvious errors. The prices stated in the aforesaid offers are exclusive of VAT and other government charges, and exclusive of any costs of postage, carriage and packaging, unless otherwise expressly stated.
4. Minor deviations in terms of quality and quantity (including the composition of the product) that are deemed admissible or technically unavoidable in commerce will be permitted and will therefore not result in the assumption of any breach on the part of **Mardenkro**. Any specifications of properties and designs, as well as samples, that **Mardenkro** makes available to the Buyer (or prospective Buyer) will be indicative only, without the goods to be supplied having to meet those specifications. **Mardenkro** will be required only to supply goods that meet the specifications that apply at **Mardenkro**, of which the Buyer will be informed on request. The goods will have the properties required for the purpose intended by the Buyer only if **Mardenkro** has been expressly informed of that purpose and **Mardenkro** has expressly agreed that the goods to be supplied will have those properties.
5. If the Buyer is in breach, **Mardenkro** will have not only the right to dissolve the agreement in question, but also the right by written notice to dissolve or to suspend the performance of any other agreements that exist between **Mardenkro** and the Buyer and that have not yet been fulfilled. In that case **Mardenkro** will also have the right to demand payment as a lump sum of all of the amounts that the Buyer owes it and/or to make future deliveries only Cash On Delivery (COD). **Mardenkro** may always exercise a right of retention in order to enforce payment of any claim against the Buyer, on any ground whatsoever. Unless **Mardenkro** has given written permission, the Buyer may not allow a third party to hold goods, on any legal basis whatsoever, unless the Buyer stipulates of such third party that it will not exercise any right of retention against **Mardenkro**. The rights described in this paragraph will not affect the other statutory rights of **Mardenkro** that **Mardenkro** may also exercise if the Buyer is granted a suspension (or provisional suspension) of payments or is declared bankrupt, or if the statutory debt rescheduling arrangement is declared applicable to the Buyer.
6. The intellectual property in respect of price lists, specifications of properties and composition, etc. of products, drawn up by **Mardenkro**, will vest in it. They may be made available to a third party only if **Mardenkro**, when so requested, gives its written permission to do so. **Mardenkro** will have the right to claim the aforesaid documents at any time at its discretion.

ARTICLE 3: PACKAGING

The packaging used by **Mardenkro** will be adequate to allow the packaged goods to travel by customary road or goods carriage in normal circumstances, with due observance of the necessary care and any instructions given, which in that case will be stated on the packaging or in the dispatch note.

If the Buyer wishes to notify **Mardenkro** of any special packaging instructions and/or wishes concerning the packaging, it must do so in writing and in time. After receipt of such notification, **Mardenkro** will assess whether it can comply with those instructions or wishes and, if and to the extent that it will do so, will charge all of the extra costs involved to the Buyer. In that case the goods will always travel for the Buyer's account and risk.

Unless the Buyer has already paid for the packaging, it will remain the property of **Mardenkro** and the Buyer will be required to return it to **Mardenkro** at **Mardenkro**'s first request and for the Buyer's account.

ARTICLE 4: DELIVERY

1. Unless otherwise expressly agreed, delivery will always be ex works, from **Mardenkro**'s warehouse in the Netherlands, or from any other place in the Netherlands specified by **Mardenkro** not later than upon the conclusion of the agreement, also if **Mardenkro** has undertaken the carriage of the goods purchased or produced. The risk of loss, destruction, reduction in value, damage, and wear and tear of goods that are the subject of the agreement will be for the Buyer's account if and as from the moment at which the goods have been delivered and have thus been placed under the control of the Buyer or of a third party to be designated by the Buyer.
2. The Buyer will be obligated towards **Mardenkro** to immediately take delivery of the goods purchased or the service offered as soon as they are presented to it. If the Buyer fails to take delivery of a good, it will be regarded as delivered the moment that **Mardenkro** has offered it, and as from that moment **Mardenkro** will hold such good for the Buyer's account and risk (without **Mardenkro** being obligated to insure it). In that case **Mardenkro** will also have the right to invoice the Buyer. If the Buyer does not file any complaint within the period after delivery specified in Article 8, the Buyer will be deemed to have accepted the quality and quantity of the goods delivered, as well as the manner of delivery.
3. Unless otherwise expressly agreed, any agreed delivery periods will be approximations only and will not be of the essence, also if a specific end date or a specific period has been agreed. In the event of late delivery, **Mardenkro** must be given written notice of default, as well as a reasonable period, to be determined in consultation with it, within which it may perform.
4. **Mardenkro** will have the right to deliver the goods to be delivered in parts, provided that it do so within the agreed period or within the period that was extended pursuant to the preceding and/or following paragraph. Unless otherwise agreed, **Mardenkro** will at all times have the right to deliver COD.
5. Also in the event of temporary inability to deliver, the delivery period will be extended to two weeks, as referred to in Article 9(6). In that case the delivery term, whether or not already extended pursuant to paragraph 3, will be extended for the duration of such inability to deliver, and by a period within which **Mardenkro** can reasonably deliver, without the Buyer (if it has legal personality) having the right to dissolve the agreement.
6. The meaning of the delivery conditions will be interpreted on the basis of the most recent edition of the Incoterms of the International Chamber of Commerce.
7. If the Buyer wishes to return goods to **Mardenkro**, it will require **Mardenkro**'s prior written permission. The costs of any return shipment will be for the Buyer's account, and the goods will travel for its risk. If, however, the return shipment takes place after **Mardenkro** has given its written permission and in the context of an alleged breach on the part of **Mardenkro**, the return shipment will be for the Buyer's account and risk, unless it is later established in or out of court that **Mardenkro** has committed breach of contract.
8. **Mardenkro** will have the right to deliver the goods in parts, unless otherwise provided in the agreement. **Mardenkro** will separately invoice the goods thus delivered.
9. If it is at any time established that proper performance requires changes in and/or additions to the work to be performed, the parties will amend the agreement accordingly in time and in consultation and will, if necessary, agree on a new delivery time. If these changes and/or additions also have financial and/or qualitative consequences, **Mardenkro** will inform the Buyer accordingly beforehand.

ARTICLE 5: SECURITY

Mardenkro will have the right to demand security upon the conclusion of an agreement. **Mardenkro** will also have the right to demand security (or additional security) during the performance of the Agreement, if it has any indication of such reduced creditworthiness of the Buyer that it may reasonably doubt the perfect fulfilment of its obligations. That will in any event be the case if the Buyer, after being given notice of default, fails to fulfil one of its payment obligations. If the Buyer, after being given notice of default, fails to provide security, **Mardenkro** may exercise the rights against it as described in Article 2(5).

ARTICLE 6: RETENTION OF TITLE; PLEDGE

1. All deliveries will be subject to retention of title. **Mardenkro** retains title to the goods delivered and to be delivered to the Buyer under any agreement, until the Buyer:
 - a. has made full payment of the price of all of such goods, increased by any interest and costs due; and
 - b. has paid all claims related to work performed or to be performed for it by **Mardenkro** in the context of the agreements in question; and
 - c. has paid the claims that **Mardenkro** acquires against it if it fails to fulfil the obligations set out above.

The Buyer may not in any way allow goods that are subject to retention of title to serve as security for any claims other than those of **Mardenkro**.

2. It applies between the parties that a pledge will be created for the benefit of **Mardenkro** in respect of any moveable property (not registered property) that **Mardenkro** receives from the Buyer, as security for the claims that **Mardenkro** has against the Buyer on any ground whatsoever, and for any claims that **Mardenkro** may acquire against the Buyer on the grounds of the legal relationship that already existed at the date of creation of the pledge. The pledge will arise without any further formalities being required the moment that **Mardenkro** receives the gift in question.
3. If any third party claims to have any right in respect of or related to a good to which a retention of title applies, or a good that has been pledged as referred to in the preceding paragraph, the Buyer will be required to notify such third party of the relevant right of **Mardenkro**, and immediately to inform **Mardenkro**.

4. If a third party holds a good to which a retention of title applies on behalf of the Buyer, the Buyer will be required, if it is in breach towards **Mardenkro**, to inform **Mardenkro** on request of the name and address of such third party, and **Mardenkro** will have the right to inform that third party that it must from then on hold that good on **Mardenkro's** behalf.

ARTICLE 7: PRICES, PAYMENT AND COSTS

1. Unless otherwise agreed, the price agreed on with **Mardenkro** will be exclusive of turnover tax, and the prices stated by **Mardenkro** will be based on delivery ex works, as referred to in Article 4(1). In the event of delivery abroad or in the event of transit trade, the Buyer will owe the import duty, taxes and EU charges in question.
2. If the agreement has been concluded with a party that has legal personality and if the cost of **Mardenkro's** products or services increases between the date of conclusion of the agreement and the date of delivery, regardless of the cause of such increase, such as increases of charges/taxes and the price of raw materials, power and personnel costs, **Mardenkro** will have the right to adjust the agreed price to such increases. The arrangement set out above will also apply if **Mardenkro** delivers on call or in parts, in which case it will apply to each partial delivery individually.

Mardenkro will have the right in the event of delivery on call or partial delivery to invoice the Buyer separately for each delivery. If a price has not been agreed in Dutch guilders or in euros, and in the event of a change in the exchange rate at the date of delivery in relation to the date of conclusion of the contract of sale that is unfavourable for **Mardenkro**, **Mardenkro** will have the right to adjust the agreed price to that change. If government taxes and/or charges – including VAT – are increased, **Mardenkro** will pass on such increases with immediate effect. If the agreement is concluded with a party that does not have legal personality, **Mardenkro** will have the right three months after the conclusion of the agreement to increase the price if **Mardenkro** can prove that significant price changes have occurred between the date of conclusion of the agreement and the desired date of delivery or maintenance. If the price increase exceeds 10%, the Buyer will have the right to dissolve the agreement, unless that price increase is the result of a change in the agreement or arises from a statutory right to do so.

3. Payment must be made within the periods specifically agreed on between **Mardenkro** and the Buyer. Absent such agreement, payment must be made within fourteen days after the invoice date. The Buyer may never claim any right of settlement or postponement. If **Mardenkro** sends the Buyer a specified statement of the amounts that the Buyer owes **Mardenkro** and of the amounts that **Mardenkro** owes it, that statement will also serve as a settlement statement. The Buyer will be in default as soon as the credit period ends, without any notice of default being required, and will owe interest as from the due date on the final amount of the invoice, at the statutory interest rate increased by 3% per year, until the date of payment in full. At the end of each one-year period, the amount on which the interest is charged will be increased by the interest due for that year. If, however, Directive 2000/35/EC of the European Parliament and the Council dated 29 June 2000 enters into force and a higher interest rate may be charged pursuant to that Directive, the Buyer will owe that higher interest rate. In the event of liquidation, bankruptcy, attachment or suspension of payment on the part of the Buyer, **Mardenkro's** claims against the Buyer will fall due immediately. **Mardenkro** reserves the right to demand full or partial payment in advance of the agreed price.
4. The Buyer will owe **Mardenkro** all court and out-of-court costs if it fails to pay an amount immediately payable by it, despite a demand for payment, and **Mardenkro** assigns the claim to a third party. The minimum amount of the out-of-court costs will be the non-contractual amount to be assessed by the court. The compensation of costs will relate to all the work to be performed by **Mardenkro's** lawyer, including the work involved in sending a demand for payment and any involvement in a settlement. If **Mardenkro** is partially unsuccessful, the costs will be moderated accordingly, unless the court believes that moderation is not called for in view of the slightness of the error made by **Mardenkro**.
5. The payments to be made by the Buyer or third parties will each time first be deducted from any claims to which **Mardenkro** cannot apply the retention of title described in the preceding paragraph. With due observance of this provision, payments will first be deducted from all of the outstanding costs, then from all of the interest due, and finally each time from the oldest principal amount.

ARTICLE 8: INSPECTION AND COMPLAINTS

1. The Buyer will be required immediately after taking delivery to inspect the good delivered or the service performed by **Mardenkro** in terms of its adequacy, in so far as such inspection is reasonably possible within that period, but in any event in terms of quantity and immediately visible defects. If the Buyer wishes to complain in this respect, it must in any event inform **Mardenkro** in a substantiated manner in writing within five workdays after delivery.
2. The Buyer must furthermore thoroughly inspect the good or service after delivery to verify that it corresponds with the agreements made and, if a defect becomes apparent, must complain to **Mardenkro** in a substantiated manner and in writing within five workdays thereafter.
3. If and in so far as defects are involved that could not reasonably be discovered within the periods specified in the two preceding paragraphs, despite the inspection stipulated in those paragraphs, the complaint must be brought to **Mardenkro's** attention in writing in a substantiated manner, within five workdays, but in any event within the one-month period described in Article 9(1), after the Buyer has discovered or could reasonably have discovered the defect. This rule also applies if the good or service lacks a property that it should have in accordance with a statement made by **Mardenkro**, or if the variation relates to facts with which **Mardenkro** was or should have been familiar but of which it did not inform the Buyer.
4. **Mardenkro** will not be required to handle any complaints submitted after the periods specified in this Article; such complaints will not give rise to any liability on its part. If **Mardenkro** nevertheless handles any such complaints, its efforts must be regarded, unless otherwise agreed, as leniency, without **Mardenkro** accepting any liability. If it is established that a complaint was wrongly made and **Mardenkro** has performed work or has delivered goods in that context, **Mardenkro** will have the right to charge the costs involved to the Buyer at the prices that customarily apply at **Mardenkro**.

5. Any complaints concerning the invoices sent by **Mardenkro** must be reported to **Mardenkro** within fourteen days after the invoice date in writing and in a substantiated manner.
6. A complaint to be made by the Buyer will not entitle it to postpone its payment, except in so far as **Mardenkro** acknowledges the complaint in writing.

ARTICLE 9: LIABILITY AND FORCE MAJEURE

1. If the Buyer has observed the regulations set out in the preceding Article, a legal claim may be filed against **Mardenkro** on the grounds of breach with due observance of the provisions of these General Terms and Conditions only within a period of one month after the date of delivery or the performance of the service.
2. If **Mardenkro** admits in writing that it is in breach or if that is otherwise established, it will have the right within a reasonable period after the Buyer has invoked such breach to notify the Buyer that it will refund the price paid by the Buyer or that:
 - a. it will redeliver or deliver the missing goods free of charge; or
 - b. it will correct the service performed free of charge, in which respect any replacement material may or may not be new, at **Mardenkro's** reasonable choice.If **Mardenkro** performs in the short term after the aforesaid notification, that will mean that the agreement has been correctly performed, and the Buyer will not be entitled to any damages. An exception will apply to the provisions of the preceding sentence if, prior to the notification referred to in the first sentence of this paragraph, the Buyer has already rightly dissolved the agreement out of court or filed a claim for dissolution and that claim is allowed. **Mardenkro** will have the right prior to performing the services referred to in this paragraph to demand of the Buyer that it return the goods in respect of which **Mardenkro** is in breach (while retaining a sample if the Buyer so wishes and if that is reasonable), before **Mardenkro** performs the outstanding service.
3. The liability will at all times be limited to the amount of the insurance moneys to be paid by **Mardenkro's** insurer in a specific case, or, if **Mardenkro's** insurer does not offer any coverage, to the invoice amount excluding VAT, if it is established that **Mardenkro** is liable for damages on any legal basis whatsoever. A series of related events will be regarded as one and the same event.

The Buyer indemnifies **Mardenkro** against any and all third-party claims in so far as such claims exceed the maximum amount referred to in the preceding sentence. **Mardenkro** will in no event be liable for any loss resulting from incorrect use and/or improper application of the product delivered. They Buyer will be required to strictly comply with the manual and the safety regulations provided by **Mardenkro**. If statutory safety regulations in the country of use stipulate more drastic regulations than those provided by **Mardenkro**, those regulations will prevail over the regulations provided by **Mardenkro**, and the Buyer will be required to comply with those regulations. If damage nevertheless arises as a result of incorrect use and/or improper application by or on behalf of the Buyer of the product delivered, that damage will be for the Buyer's account and risk.

4. Contrary to this extent to the other provisions of the preceding paragraph, if it is established that the Buyer belongs to a sector in which the standardisation of agreements by general terms and conditions with limitations or exclusions of liability is a general phenomenon and **Mardenkro** concludes the agreement within that sector, or if **Mardenkro** concludes the agreement with a company from another sector that regularly operates in the sector in which **Mardenkro** operates and in which the aforesaid standardisation also applies, the Buyer will indemnify **Mardenkro** against any and all claims from third parties that incur any damage in the context of the performance of the agreement.
5. In addition to what is defined as force majeure by law, the following will also be regarded as such: strikes and/or sickness of **Mardenkro's** employees, breach and/or force majeure on the part of its suppliers, carriers or other third parties involved in the agreement, traffic congestion, forces of nature, war or mobilisation, restrictive measures of any authority, fire and other accidents in its business, and other circumstances in so far as **Mardenkro** consequently cannot reasonably be expected to perform the agreement or to do so in full, and, moreover, if such inability to perform is reasonably expected to take longer than two weeks after the event or events that give rise thereto. An event of force majeure will also arise if it has reasonably been established that the inability to perform will make the performance of the agreement definitely impossible in full or in part. If such an event of force majeure arises, either of the parties will have the right to dissolve the agreement in full (provided that the event of force majeure is sufficiently substantial) or in part (with regard to the part in respect of which an event of force majeure applies), in which latter case the parties will be required to perform the part of the agreement that has not been dissolved. If the agreement is dissolved pursuant to this paragraph, neither of the parties will owe the other party any damages with regard to the dissolved part of the agreement.
6. In the event of inability to perform that is reasonably expected to last no longer than two weeks after the event or events referred to in the preceding paragraph arose, no event of force majeure will apply and the term within which **Mardenkro** must deliver pursuant to the provisions of Article 4(5) will be extended, without either of the parties being entitled to dissolve the agreement, but only if both parties have legal personality.
7. For the purposes of this Article, breach also includes an unlawful act.

ARTICLE 10: APPLICABLE LAW AND COMPETENT COURT

1. All agreements concluded by **Mardenkro** will be governed by Dutch law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods, if that Convention would otherwise apply.
2. Any and all disputes that may arise between **Mardenkro** and the Buyer and to which these General Terms and Conditions apply will be settled, unless rules of mandatory law provide otherwise, by the competent court within the district of the District Court of Breda, the Netherlands, without prejudice to **Mardenkro's** right to initiate legal proceedings against the Buyer before a court that is otherwise competent.