

## **GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT**

**A. VAN DEN BROEK B.V.**, referred to below as: "VDB", Prof. Minckelersweg 2, 5144 NZ, Waalwijk

### **ARTICLE 1: DEFINITIONS**

In these General Terms and Conditions the following definitions shall apply:

- Cancellation: the written notification that the Agreement or part thereof will not be used or that the Agreement or part thereof will not be performed.
- Agreement: any agreement between VDB and Contracting Party under which goods are supplied to Contracting Party by VDB.
- Parties: VDB and Contracting Party.
- VDB: the enterprise by the name of A. van den Broek, registered in the Trade Register under number 18122921.
- Contracting Party: the (legal) entity to which the offer of VDB is addressed, with which VDB has entered into an Agreement or on behalf of which the (legal) transaction is/has been performed.
- Goods: Any objects that are the object of an Agreement with VDB.

### **ARTICLE 2: APPLICABILITY**

- 2.1. These General Terms and Conditions apply to and are part of any negotiations, offers, price quotations, Agreements and other (legal) transactions, irrespective whether they have been concluded orally, in writing, in electronic or any other form, in connection with the delivery of Goods by VDB to or for Contracting Party.
- 2.2. Deviations of these General Terms and Conditions and the Agreement are valid only if they have been expressly confirmed by VDB. In case of deviation from one or more points of the General Terms and Conditions and/or in case VDB commences performance of deviations of the General Terms and Conditions and/or Agreement, the remaining provisions shall remain in full force and effect.
- 2.3. VDB expressly rejects the applicability of any General Terms and Conditions of Contracting Party. In case Contracting Party uses any General Terms and Conditions that may apply to the Agreement, the General Terms and Conditions of VDB will prevail, even in case the terms of Contracting Party would contain a similar provision. Any Agreement is entered into by VDB subject to the condition that VDB has the right to suspend and/or rescind within 8 days after any general terms and conditions of Contracting Party have become known to VDB, in case the General Terms and Conditions of VDB should not be applicable, without ensuing liability for damages towards Contracting Party.
- 2.4. The General Terms and Conditions shall also apply to Goods or part thereof which VDB has obtained from third parties and are supplied to Contracting Party, whether processed or otherwise, and to Goods which are supplied to Contracting Party by any third parties on behalf of VDB in performance of the Agreement.
- 2.5. Contracting Party irrevocably accepts the applicability of these General Terms and Conditions, also for any future Agreements and Offers.
- 2.6. In case of conflict between provisions of the Agreement and the General Terms and Conditions, the provisions of the Agreement shall prevail.
- 2.7. In case any provision of these General Terms and Conditions should be void or annulled, the remaining provisions shall remain in full force and effect. In that case the Parties shall consult in order to agree new provisions to replace the void or annulled provisions, taking into consideration the purpose and purport of the void or annulled provisions to the extent as possible.

### **ARTICLE 3: OFFERS**

- 3.1. All offers are valid until 14 days of the date of the offer, unless the offer contains a different term. Nevertheless VDB has the right to reconsider its offer as long as Contracting Party has not accepted the offer.
- 3.2. In case of a combined price quotation VDB is not obliged to supply part of the Goods contained in the offer at a proportionate part of the price quoted for the combination of Goods as a whole.
- 3.3. Offers shall only apply to the Goods and quantities referred to in the Offer and shall not apply to repeat orders or new orders.

- 3.4. Illustrations, sizes, weights, colours, technical information and such in brochures, Offers and Agreements must be interpreted in such a way that Contracting Party is obliged to allow for deviations that do not exceed normal limits (Cf. also articles 8 and 21).

#### **ARTICLE 4: CONCLUSION OF AGREEMENTS AND CONFIRMATION**

- 4.1. An Agreement is concluded by the written acceptance by Contracting Party within the term specified in the Offer or by performance of services or the Agreement by VDB.
- 4.2. The invoice is considered the written order confirmation of VDB in case no written confirmation has been given prior to said invoice.
- 4.3. Agreements concluded through the agency of representatives/agents of VDB, shall not be binding on VDB until after they have been confirmed in writing by VDB or until after VDB has commenced performance of the Agreement.

#### **ARTICLE 5: CANCELLATION**

- 5.1. Cancellation by Contracting Party is possible only prior to delivery of the Goods and subject to the express, written approval of VDB.
- 5.2. In case the cancellation by Contracting Party is accepted by VDB, VDB has the right to attach conditions to said cancellation, such as payment of part of the amount of the Agreement, even in case no damage was caused to VDB.

#### **ARTICLE 6: RESCISSION**

In case Contracting Party does not, or not in a timely manner, comply with any of its obligations under the Agreement and in case of late payment, suspension of payment, (petition for) suspension of payment, (petition for) bankruptcy, application of a debt restructuring scheme or appointment of an administrator over Contracting Party or in case liquidation of the enterprise of Contracting Party, VDB has the right to suspend the Agreement and any other Agreements or part thereof that have not yet been performed, without notice of default and/or intervention of a court of law being required, without ensuing liability for damages for VDB.

#### **ARTICLE 7: PRICES**

- 7.1. Unless expressly stated otherwise prices are expressed in euro. In case prices are expressed in foreign currency and the counter-value is expressed in euro, this counter-value shall be approximate only.
- 7.2. Unless expressly agreed otherwise, prices are in any case expressed:
- exclusive of VAT;
  - on the basis of minimum quantities applied by VDB;
  - delivery ex works (Incoterms 2010));
  - exclusive of import and export duties and any other levies by the authorities;
  - exclusive of insurance costs;
  - exclusive of any disposal charges;
  - exclusive of environmental levies or environmental surcharges that are or have been imposed by the authorities;
  - exclusive of costs of quality inspections.
- 7.3. In case one of the cost price determining factors of a Good should change during the time of the offer and the date of delivery, VDB has the right to change the agreed price accordingly, irrespective of the fact whether or not the increase of the cost price could have been foreseen at the time of the offer or its confirmation, the above subject to the legal regulations that apply to the case. In case the price increase exceeds 5%, Contracting Party has the right to rescind the Agreement without any ensuing liability for damages for the Parties towards each other.
- 7.4. Price changes due to currency fluctuations and changes in exchange rates between euro and other currencies – in case any payments in connection with deliveries are made in other currencies than euro, are borne by Contracting Party to the extent that these changes exceed 5% compared to the currency at the date at which the Agreement was concluded.

#### **ARTICLE 8: QUANTITIES/DIMENSIONS**

- 8.1. The quantities ordered by Contracting Party will be adjusted by VDB to meet the minimum quantities/packed units as used by VDB.
- 8.2. The quantities stated in the Agreement are expressed as accurately as possible; nevertheless VDB is allowed to deviate from quantities stated or agreed. The extent of the tolerances has been defined in article 21 of these General Terms and Conditions.
- 8.3. The quantities delivered will be stated on the delivery document.
- 8.4. In case Contracting Party does not inform VDB in writing within 24 hours of delivery of any objections to the quantities stated on the delivery document, the quantity stated on the delivery document will be deemed to correctly describe the items delivered.
- 8.5. Unless expressly agreed otherwise all dimensions stated are approximate.
- 8.6. Changing dimensions already specified by Contracting Party after conclusion of the Agreement may result in any additional costs, which are (or may be) charged to Contracting Party.

#### **ARTICLE 9: PLACE AND METHOD OF DELIVERY**

- 9.1. The time of delivery commences on the day at which the written order confirmation has been dated or (failing a written order confirmation) on the day at which Contracting Party requests VDB in writing to deliver on a certain date. The time of delivery does not commence until after Contracting Party has provided VDB with any and all information, documentation, any required permits and materials to be processed that are required for the performance of the Agreement.
- 9.2. Times of delivery stated by VDB are always approximate and are never final deadlines.
- 9.3. Non-observance of the time of delivery does not entitle Contracting Party to cancel the Agreement, unless non-observance of the time of delivery is - according to standards of reasonableness and fairness - unacceptable, and Contracting Party cannot be required any longer to continue the Agreement. That is the case if the delivery time is not observed during more than thirty days. In case Contracting Party cancels the Agreement on account of unacceptable non-observance of the time of delivery, this will not result in any obligation on the part of VDB to compensate any damage.
- 9.4. Place of delivery is the warehouse of the (principal) place of business of VDB. Delivery takes place Ex Works (Incoterms 2010).
- 9.5. Any part delivery is considered and processed as one separate delivery, with all legal consequences in connection with that.
- 9.6. In case Contracting Party declares prior to delivery that it wishes to receive the Goods at a different location than the location agreed, VDB will cooperate with that, if possible. In case meeting this request causes additional costs, Contracting Party is obliged to pay said additional costs to VDB.
- 9.7. Contracting Party is required to return any customs documents to the relevant authorities in a timely manner, failing which Contracting Party will be liable for any additional costs in connection with this.

#### **ARTICLE 10: TRANSPORT**

- 10.1. In case VDB sees to transport of the Goods this will take place at the risk and for account of Contracting Party in a way as determined by VDB.
- 10.2. Except in those cases in which transport of Goods is not seen to by VDB the General Transport Conditions ["Algemene Vervoerscondities (AVC)] or CMR Conditions ["CMR Condities"] as they are used in the transport industry will apply to the transport.
- 10.3. Contracting Party is required to see to adequate insurance for the transport of Goods.
- 10.4. In case Parties have agreed that VDB will deliver Goods at a certain location, and it appears on delivery that delivery at said location is not possible, any additional costs caused, such as but not limited to: storage, transport and hours, shall be borne by Contracting Party.
- 10.5. Delivery always takes place next to the vehicle that delivers the Goods. Contracting Party is obliged to take delivery of the goods at that location and, together with VDB, to see to the unloading of the Goods. In case Contracting Party fails to comply with this, any costs caused by that shall be borne by Contracting Party.

#### **ARTICLE 11: PACKAGING AND PACKING MATERIALS USED**

- 11.1. Unless expressly agreed otherwise packaging is included in the price. Packaging is not understood to include commercial packaging. VDB does not charge any deposit for packaging, unless it is required to do so by the authorities or if this has been expressly stated.
- 11.2. In case Goods are delivered on so-called Euro pallets or pallets that are part of a pallet pool, these pallets will be charged as packaging unless Contracting Party returns identical, undamaged pallets on delivery, which pallets represent an identical (total) value as the pallets on which the Goods have been delivered.
- 11.3. In case VDB is required by or on behalf of the authorities to take back packaging or packaging materials delivered and used on delivery to Contracting Party, any costs caused in connection with that, including any costs of disposal, shall be borne by Contracting Party.
- 11.4. Packaging such as wheeled containers, crates, boxes, pallets and such, if they are not intended for single use, shall at all times remain the property of VDB. Contracting Party is responsible for packaging sent to Contracting Party, also if no deposit has been charged for packaging. Contracting Party is obliged to return the returnable packaging held by Contracting Party to VDB as soon as possible, costs to be borne by Contracting Party, unless expressly agreed otherwise in writing.
- 11.5. Packaging material charged (deposit) is credited by VDB after said packaging has been returned to the warehouse of VDB in an undamaged condition. In case of minor damage VDB reserves the right to credit less than the deposit charged. In case of extensive damage no amount shall be credited and the packaging material will be at the disposal of Contracting Party.

#### **ARTICLE 12: Storage**

- 12.1. In case Goods cannot be delivered at the time agreed due to an act on the part of van Contracting Party, VDB shall store said Goods at the risk and for account of Contracting Party. Any costs in connection with that shall be borne by Contracting Party.
- 12.2. Parties may agree that the Goods are stored in the warehouse of VDB. In that case VDB shall at all times have the right to fully and immediately invoice said Goods. Contracting Party may dispose of these Goods on call. In case Contracting Party uses this possibility a separate Call-off Agreement may be entered into.

#### **ARTICLE 13: RESERVATION OF TITLE**

- 13.1. Any Goods supplied to Contracting Party by VDB shall remain the property of VDB until Contracting Party has paid any claims of VDB, however caused, increased by interest and any other claims.
- 13.2. Contracting Party is prohibited from selling, leasing, pledging, processing or encumbering in any way or relinquishing control over the Goods supplied subject to reservation of title, unless normal business operations of Contracting Party require this. In case Contracting Party processes in any way the Goods supplied subject to reservation of title as part of its normal business operations, this shall take place as if it were on behalf of VDB. If the Goods are processed together with other Goods that are not the property of VDB, VDB shall obtain a shared title to the new good, proportionate to the value of the Goods of VDB that have been processed in the newly created good.
- 13.3. Contracting Party now and for henceforth gives VDB or any third party to be appointed by VDB its unconditional and irrevocable permission to – in all cases in which VDB intends to exercise its ownership rights – access all those places at which the property of VDB is or may be located and to take possession of said Goods. In case VDB decides not to exercise its ownership rights, for instance because they are customer-specific Goods, this does not release Contracting Party in any way from any obligations to effect payment and/or pay damages and/or any other obligations.
- 13.4. The costs caused by repossession shall be charged to Contracting Party. In case of repossession crediting will take place on the basis of the value of the Goods as it is established on repossession. This assessment or valuation is reserved to VDB and/or a third party engaged by VDB exclusively.
- 13.5. In case third parties attach any goods supplied subject to reservation of title, or intend to create or invoke rights on said Goods, Contracting Party is obliged to inform VDB of this in

writing, as soon as may be reasonably expected but in any case within 24 hours after the attachment and/or creation of the rights.

- 13.6. If Contracting Party creates a new good or orders a new good to be created from the Goods supplied by VDB subject to reservation of title, Contracting Party will act during creation as if it were as instructed by VDB and will hold said Good on behalf of VDB. Contracting Party will not become the owner until after the time at which the reservation of title has lapsed due to the fact that any claims – however caused- have been paid to VDB. Contracting Party undertakes to insure and keep the Goods supplied subject to reservation insured against fire, explosion and water damage, as well as theft, and to allow VDB to inspect the insurance policy upon request.
- 13.7. Contracting Party is obliged to exercise due care with respect to the Goods supplied subject to reservation of title.
- 13.8. Any costs in connection with the creation and/or performance of any acts required in connection with the reservation of title as well as any other securities shall be borne by Contracting Party.
- 13.9. To the extent that VDB should have any other claims on Contracting Party and VDB supplied to Contracting Party any Goods that are not subject to reservation of title, Contracting Party shall create a non-possessory lien on said Goods with VDB as the beneficiary as security for the fulfilment of the obligations of Contracting Party, which non-possessory lien is accepted by VDB. This non-possessory lien is also created on the claims of debtors of Contracting Party in case they purchase from Contracting Party Goods that are subject to reservation of title. Contracting Party will sign a Deed creating the non-possessory lien upon request of VDB. Contracting Party shall guarantee that it is authorized to pledge the Goods and that the Goods, apart from the rights of VDB, are not subject to any rights of pledge and/or limited rights.
- 13.10. The following provision applies to deliveries in Germany or to German Contracting Parties:  
Auf Lieferungen in Deutschland oder an deutsche Vertragsparteien findet die nachstehende Bestimmung Anwendung:

Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die uns aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Abnehmer und seine Konzerngesellschaften zustehen. Unser Eigentum erstreckt sich auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Abnehmer stellt die neue Sache unter Ausschluss des eigenen Eigentumserwerbs für uns her und verwahrt sie für uns. Hieraus erwachsen ihm keine Ansprüche gegen uns.

Bei einer Verarbeitung unserer Vorbehaltsware mit Waren anderer Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Sache fortsetzen, erwerben wir zusammen mit diesen Lieferanten – unter Ausschluss eines Miteigentumserwerbs des Abnehmers – Miteigentum an der neuen Sache, wobei unser Miteigentumsanteil dem Verhältnis des Rechnungswertes unserer Vorbehaltsware zu dem Gesamtrechnungswert aller mitverarbeiteten Vorbehaltswaren.

Der Abnehmer tritt bereits jetzt seine Forderungen aus der Veräußerung von Vorbehaltsware aus unseren gegenwärtigen und künftigen Warenlieferungen mit sämtlichen Nebenrechten im Umfang unseres Eigentumsanteils zur Sicherung an uns ab.

Bei Verarbeitung im Rahmen eines Werksvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages unserer Rechnung für die mitverarbeitete Vorbehaltsware schon jetzt an uns abgetreten.

Solange der Abnehmer seinen Verpflichtungen aus der Geschäftsverbindung an uns ordnungsgemäß nachkommt, darf er über die in unserem Eigentum stehende Ware im ordentlichen Geschäftsgang verfügen und die an uns abgetretenen Forderungen selbst einziehen.

Bei Zahlungsverzug oder begründeten Zweifeln an der Zahlungsfähigkeit oder

Kreditwürdigkeit des Abnehmers sind wir berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen.

Scheck-/Wechselzahlungen gelten erst nach Einlösung der Wechsel durch den Abnehmer als Erfüllung.

Hinsichtlich der Vereinbarung von Eigentumsvorbehaltsrechten gilt ausschließlich deutsches Recht.

#### **ARTICLE 14: COMPLAINTS**

- 14.1 Contracting Party is obliged to inspect or order inspection of the Goods upon delivery, which shall be a thorough inspection that includes quantities, any damage caused during transport and visible defects of Goods, for instance the nature of the Goods or their quality. Contracting Party must inform VDB of any complaints as referred to in this article in writing, within 24 hours of delivery.
- 14.2 Visible deficiencies/defects and/or damage must be stated by Contracting Party on the waybill or delivery document upon delivery.
- 14.3 In case complaints concern the fact that the Goods would not meet the agreed quality requirements or requirements that may be made with respect to the Goods for normal use and/or commercial purposes, VDB must be informed of these complaints by Contracting Party in writing, subject to the provision of article 8.4 within three days of delivery or within three days after which the defect in the Goods should have reasonably be discovered, but no later than three months after delivery.
- 14.4 In case no remarks have been made by Contracting Party on the waybill or receipt upon delivery with respect to any damaged Goods, packing and/or packaging, this will constitute full proof that Contracting Party has received the Goods in a sound and undamaged condition on delivery.
- 14.5 The mere fact that a complaint is looked into does not imply that VDB would acknowledge any liability.
- 14.6 Complaints shall at least contain a detailed and accurate description of the defect, as well as a statement of further information from which it can be concluded that the Goods supplied by VDB and rejected by Contracting Party are identical.
- 14.7 The Goods to which the complaints apply shall remain available to VDB for the purpose of inspection and/or examination in the condition which they had at the time at which the defects were discovered, and they may not be resold, unless after the express, written approval of VDB. In case it is impossible to keep Goods available, Contracting Party is required to record the situation on delivery or discovery of the defect by means of images (photo/film) and provide this record to VDB. After that VDB will inform Contracting Party whether these image sources are sufficient evidence to evaluate the complaint/objection.
- 14.8 In case the complaints apply to part of the Goods supplied, this cannot be a reason to reject the entire delivery, unless the entire delivery cannot be reasonably considered useful in that case.
- 14.9 In case Contracting Party has submitted a written complaint in a timely manner, stating the reasons for this complaint, which meets the provisions of this paragraph, VDB will have the Good/Goods inspected by a research department of an external expert organization to the extent as possible. The result of this inspection shall be binding on Parties.
- 14.10 In case the inspection as referred to in article 14.9 should show that the complaint is well-founded, i.e. that the Goods do not meet the Agreement, VDB shall have no further obligation than replacing the rejected Goods, costs to be borne by VDB or, (at its sole discretion), crediting Contracting Party for the amount of the rejected Good.
- 14.11 In case of replacement or compensation of all Goods, the part thereof that has already been used by Contracting Party shall be taken into account.
- 14.12 Contracting Party shall not return the rejected Good to VDB until after the prior, written approval of VDB and on such conditions as to be determined by VDB.
- 14.13 Any claim of Contracting Party will lapse after it has used, processed, printed or cut the Good, respectively had the Good used, processed, printed or cut or resold the Good to any third

parties, unless Contracting Party proves that it has not reasonably been able to inform VDB of the complaint at an earlier stage.

- 14.14 The term for complaints about invoices is eight days of invoice date. In case no written complaints against the invoice have been submitted within this term, it is deemed to fully and correctly represent the relevant transaction.
- 14.15 After expiry of the terms referred to in this article Contracting Party is deemed to have approved the Goods, respectively the invoice. Complaints will not be looked into by VDB after expiry of said term.
- 14.16. VDB is not liable for and not obliged to look into and/or inspect objections to and/or complaints about defects in case Contracting Party has failed to meet its payment obligations or other obligations or part thereof towards VDB and in case Contracting Party and/or third parties, on behalf of Contracting Party or otherwise, has/have in any way modified and/or repaired the Goods.
- 14.17. Complaints or defects do not give Contracting Party the right to suspend payment obligations or other existing obligations towards VDB.

#### **ARTICLE 15: PAYMENT**

- 15.1. Goods that are collected by Contracting Party or a third party engaged by Contracting Party at the warehouse of VDB must be paid in cash, unless it has been expressly agreed otherwise with Contracting Party in writing.
- 15.2. Payment shall take place within thirty days of invoice date, without any discounts or set-off (unless expressly agreed otherwise in writing), at the office of VDB or by transfer to the account specified in the invoice.
- 15.3. VDB has the right to decide during the performance of the Agreement to deliver COD only or demand payment in advance.
- 15.4. In case Contracting Party fails to effect payment within the required term it shall be automatically in default without any notification or notice of default being required.
- 15.5. In case Contracting Party is in default it is obliged to pay legal commercial interest in accordance with article 6:119a Dutch Civil Code [BW], increased by extrajudicial costs of collection in the amount of 15% of the invoice amount with a minimum of € 250,00, without prejudice to the other rights of VDB.
- 15.6. Failure to meet all or part of its payment obligations or failure to meet said obligations in a timely manner by Contracting Party shall give VDB the right to suspend performance or further performance of the Agreement until Contracting Party has met all its obligations. In addition to that VDB shall have the right to rescind the agreement out of court, without prejudice to the right of VDB to damages in connection with later performance or non-performance of the Agreement.
- 15.7. Payments made by Contracting Party shall first be applied to interest and costs due, then to the oldest, outstanding payable invoices, even if Contracting Party should specify that the payment applies to a different invoice.
- 15.8. Contracting Party does not have the right to transfer any claim which VDB has against Contracting Party under the Agreement.

#### **ARTICLE 16: FORCE MAJEURE**

- 16.1. Force majeure is defined, in addition to its definition provided by law, as any external influences, foreseen or unforeseen, beyond the scope of control of VDB, due to which VDB is prevented to meet its obligations, including strike in its company.
- 16.2. In case of Force Majeure VDB has the right to suspend performance of the Agreement as long as the Force Majeure circumstances reasonably prevent VDB from performing the Agreement.
- 16.3. In case the duration of the Force Majeure situation exceeds thirty days, the Parties have the right to rescind the Agreement out of court without ensuing liability for damages. Contracting Party is obliged to pay the price for the Goods already delivered to Contracting Party until that point in time.

#### **ARTICLE 17: WARRANTY**

- 17.1. VDB guarantees the reliability of its Goods during a term not exceeding six months after delivery or shorter if its supplier uses a shorter warranty term. The warranty applies subject to the limitations contained in these General Terms and Conditions only, and in case and to the extent that the instructions of VDB with respect to the use of these Goods have been strictly complied with.
- 17.2. VDB only gives a warranty for defects of which Contracting Party shows that they were caused prior to or during the warranty period, and only or mainly as a direct consequence of incorrect production or incorrect processing chosen by VDB or as a consequence of unsuitable materials chosen by VDB. In case the defect is the result of any other cause, VDB is not liable and not subject to any warranty obligations.
- 17.3. Not covered by the warranty are defects that are caused or partly caused by:
  - a. wear and tear during normal use;
  - b. repairs by third parties including Contracting Party;
  - c. the application of any government regulations with respect to the nature or quality of the materials and raw materials used;
  - d. materials and raw materials respectively Goods used or applied in consultation with Contracting Party;
  - e. materials or goods that were provided for processing to VDB by Contracting Party;
  - f. materials, goods, operating methods and constructions used or applied at the express instruction of Contracting Party, as well as materials and/or goods supplied by or on behalf of Contracting Party;
  - g. parts obtained from third parties by VDB, to the extent that said third parties do not or have not provided a warranty to VDB;
  - h. specific development risks of newly developed Goods.
- 17.4. VDB guarantees the suitability of the Goods delivered by VDB, during normal use (in the industry concerned). In case of a higher frequency of use (than is customary in the industry) any right to invoke the warranty will become void. The warranty is also voided in case the Goods are used for any other purposes than the purpose for which they are intended.
- 17.5. The defects covered by the warranty referred to in article 17.2. will be replaced by VDB, or the amount invoiced for these defective Goods will be credited, this at the sole discretion of VDB. Any costs in excess of the sole obligation as referred to in the previous sentence such as, but not limited to, costs of shipping, travel and expenses, as well as costs of (dis)assembly are borne by Contracting Party.
- 17.6. For replacement Goods provided by VDB under its warranty obligations a warranty will be given for a period of six months or less in case the supplier of VDB uses a shorter warranty term, unless agreed otherwise. This warranty term commences on the day of delivery of the replacing Goods.
- 17.7. VDB is not obliged to provide any warranty in case Contracting Party fails to comply, fails to properly comply or fails to comply in time with any obligations of Contracting Party resulting from the Agreement or a different, related Agreement or other obligation.

#### **ARTICLE 18: LIABILITY**

- 18.1. VDB is never liable for any indirect damage of Contracting Party or any third parties including consequential damage, immaterial damage or operating damage. VDB is never liable for damage in connection with any constructions or materials specified by Contracting Party or materials or parts of Goods that were supplied by or on behalf of Contracting Party.
- 18.2. VDB is not liable for damage of whatever kind caused because VDB acted upon incorrect and/or incomplete information provided by Contracting Party, even if Contracting Party was not aware of this incorrectness and/or incompleteness.
- 18.3. At all times liability is in any case limited to the amount paid by the liability insurance of VDB in the given case, increased by the applicable deductible.
- 18.4. In case the consequences of any damage caused in connection with the Agreement could have reasonably been insured by Contracting Party or are normally insured by contracting parties in the same situation and same industry as Contracting Party, any liability of VDB is excluded.
- 18.5. VDB is never liable for damage caused by:
  - a. incorrect application and/or incorrect processing of Goods supplied by VDB;



- b. non-obtainability of the required permits by Contracting Party;
- c. injuries caused during assembly or use by Contracting Party or third parties engaged by Contracting Party, unless the injury is caused by a defective Good supplied by VDB;
- d. unavailability and/or unsuitability of the required facilities;
- e. insufficient anchoring.

#### **ARTICLE 19: PRIVATE LABELS IN THE NAME OF CONTRACTING PARTY**

- 19.1. If agreed, VDB will print packaging materials according to the design of Contracting Party.
- 19.2. Before commencing printing of packaging material according to a design of Contracting Party, a proof will be presented to Contracting Party for inspection. After its approval any liability of VDB in connection with the design, in whatever shape, is excluded, if and to the extent that the Goods do not significantly differ from the proof.
- 19.3. The liability of VDB for colour variations is excluded in case and to the extent that the colour used by VDB is identical to the sample provided to VDB by Contracting Party or the colour number stated to VDB by Contracting Party.
- 19.4. VDB has the right to charge any costs in connection with the printing of packing materials according to a design of Contracting Party, such as design drawings, plates and cylinders, directly to Contracting Party.
- 19.5. Any design drawings, plates, cylinders and such, made by or on behalf of VDB, whether at the request of Contracting Party or otherwise, also if they are or have been charged to Contracting Party in full or in part, shall remain the property of VDB.
- 19.6. In case no Agreement is concluded after an offer, VDB has the right to charge to Contracting Party the costs of a design made and any plates made. Contracting Party is obliged to pay said costs.
- 19.7. Plates that have been used by or on behalf of Contracting Party are deemed to be approved.

#### **ARTICLE 20: INDUSTRIAL PROPERTY RIGHTS**

- 20.1. Any intellectual property rights in Goods supplied and/or developed by VDB shall vest in VDB, its licensor or suppliers exclusively. Contracting Party will only be granted the rights of use which are expressly granted in the General Terms and Conditions and by law.
- 20.2. VDB indemnifies Contracting Party from and against any legal actions brought by a third party on the basis of the allegation that the Goods developed by VDB infringe on an intellectual property right of said third party, subject to the condition that de Contracting Party informs VDB in writing and without delay of the existence and content matter of that legal action, and leaves the entire handling of the action, including entering into any settlements, to VDB. To that end Contracting Party will provide the required powers of attorney, information and assistance to VDB in order to defend itself in this legal action, if necessary on behalf of Contracting Party. This obligation to provide indemnification lapses in case the alleged infringement is in connection with (1) materials made available to VDB by Contracting Party for use, processing or incorporation, or (2) modifications made to the Goods by Contracting Party or a third party on behalf of Contracting Party without the written approval of VDB.
- 20.3. The obligation to provide indemnification in article 20.2. of these General Terms and Conditions also applies vice versa for Contracting Party in case the action applies to a design as described in article 19 of these General Terms and Conditions.
- 20.4. Any information, drawings, illustrations and schedules provided by VDB in catalogues and price lists are protected by copyright. Contracting Party is not allowed to copy or allow third parties to peruse said documentation without the express approval of VDB.
- 20.5. The copyright in designs, drawings, sketches, lithographs, photos, programmes (software), models, stamps, die cuts, plates, patterns and such shall at all times vest in VDB.
- 20.6. In case Contracting Party provides raw materials, auxiliary materials, ingredients or printed matter to be processed in Goods purchased from VDB by Contracting Party, Contracting Party, by providing said items, expressly indemnifies VDB from and against any possible claims brought by third parties on account of infringement on copyright and patent rights, brand or design rights.

#### **ARTICLE 21: TOLERANCES**

- 21.1. With respect to the specifications agreed the deviations specified below, both upward and downward, are allowed. In order to determine tolerances the average of the total quantity (order) of one type, quality, colour and finish supplied will serve as the criterion. For other specifications than those referred to below the deviations allowed during previous deliveries, and failing those, the customary deviations, are allowed. In case a minimum or maximum value has been agreed, a double deviation, both upward and downward will be allowed.
- 21.2. With respect to quantity the criterion applies that VDB is deemed to have delivered according to the Agreement in case the deviation does not exceed 10%, both downward and upward.
- 21.3. Per order is understood to mean: one batch in one size and quality. Invoicing takes place on the basis of the actual quantity delivered.
- 21.4. With respect to materials the criterion applies that VDB is deemed to have delivered according to the Agreement in case the deviations in quality, colour, hardness, satinage, thickness and such are minor. For the determination whether a delivery exceeds the tolerances an average taken from the entire delivery needs to be rejected, which rejection is possible only in case of a deviation exceeding 10%. Deviations in colour of cardboard or covering are no reasons for complaints.
- 21.5. In case a packaging range consists of various base materials VDB does not guarantee unity of colour.

#### **ARTICLE 22: LIMITATION**

Any right to submit claims for damages to VDB will expire by the mere lapse of twelve months after the date of delivery of the Goods.

#### **ARTICLE 23: APPLICABLE LAW**

All negotiations, offers, price quotations, Agreements and any other (legal) transactions between VDB and Contracting Party are governed by Dutch law exclusively, irrespective of the place at which the Agreement is performed. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) is expressly excluded.

#### **ARTICLE 24: DISPUTES**

- 24.1. In case Contracting Party fails to fulfil one of its obligations resulting from these General Terms and Conditions and/or the Agreement, Contracting Party shall forfeit to VDB, without any notification being required, a penalty in the amount of € 5.000,00 for each instance as well as a penalty in the amount of € 2.500,00 for each day at which the failure in fulfilment continues, without prejudice to the right of VDB – by way of derogation from article 6:92 BW – to claim full damages, increased by costs and interest, to claim fulfilment and/or the other rights of VDB resulting from the General Terms and Conditions and/or the Agreement.
- 24.2. Any disputes that may arise shall be submitted to the competent court, being the district court "Zeeland-West-Brabant", residing at Breda.
- 24.3. In case legal proceedings are instigated by Contracting Party against VDB as the defendant, and the court finds against Contracting Party and/or the claim of Contracting Party is rejected or granted in part only, any costs of (legal) assistance, both in and out of court, irrespective of who provided said assistance, shall be borne by Contracting Party.

*Waalwijk, 30 September 2014*