

# GENERAL TERMS AND CONDITIONS

## Definitions

In these General Terms and Conditions the following terms shall have the following meanings, except where stated otherwise:

**General Terms and Conditions:** these general terms and conditions.

**Day:** calendar day.

**Our Mapp:** the company Our Mapp VOF, located at Pannekoekstraat 56c 3011LJ, in Rotterdam and registered with the Trade Register of the Dutch Chamber of Commerce under number 75080621.

**Customer:** every legal person or individual, acting in the conduct of a business or profession, who would like to enter into a contract with Our Mapp.

**Website:** name of the website of Our Mapp, being [www.ourmapp.com](http://www.ourmapp.com).

## Applicability

1. These General Terms and Conditions apply to all offers, proposals and agreements made by Our Mapp and all obligations arising thereto to the customer. To the extent the customer (also) orders other products or services whereupon special general terms and conditions are applicable, these special general terms and conditions are also declared applicable to the agreement between the customer and Our Mapp.
2. In case the customer declares its own general terms and conditions applicable to an agreement with Our Mapp or refers to it, these general terms and conditions shall not be accepted by Our Mapp. The General Terms and Conditions of Our Mapp shall prevail, unless explicitly agreed otherwise at an earlier stage.
3. The General Terms and Conditions are provided to the customer in advance and can be reviewed via the website and can be downloaded as a PDF file on the website as well. The General Terms and Conditions shall be provided for free.
4. All the agreed provisions in favour of Our Mapp of these General Terms and Conditions and of any further agreements, are also applicable to any third party hired, called in or used by Our Mapp.
5. These General Terms and Conditions do not apply to offers to and agreements with individuals who do not act in the conduct of a business or profession.

## Offers/proposals

1. All offers/proposals qualify as a non-committal offer and/or proposal and can always be revoked, also in case it includes a term for acceptance. Proposals/offers can also be revoked in writing within seven days after receipt by Our Mapp, in which case no agreement will be concluded.
2. Offers/proposals can only be accepted in writing (including an acceptance by telefax or those made through electronic means). However, Our Mapp is entitled to accept an oral acceptance as if this would have been done in writing. In case the customer places an order on the website of Our Mapp, this order is final in case the customer clicks on the order button or receives a confirmation of his order by e-mail. Once the customer of Our Mapp receives a confirmation by e-mail, a binding agreement between parties is established.
3. Information that is included in advertising material in the broadest sense of the word, such as catalogues, pricing lists, brochures and websites of third parties, shall never be binding for Our Mapp.
4. Except for written agreements stating explicitly otherwise, specifications of size, weight and other information are estimates, as accurate and reliable as possible.

## Prices

1. All prices provided by Our Mapp are based on price determining factors that are known at the time of issuance of an offer/proposal.
2. Unless explicitly agreed otherwise in writing, prices provided by Our Mapp are always including VAT and excluding shipment costs.
3. Our Mapp is entitled to adjust the prices or parts thereof for products and/or services that have not been delivered or paid yet due to changes of price determining factors, such as raw material prices, wages, taxes, production costs and currency exchange rates.
4. Our Mapp is authorized to adjust the prices with immediate effect in case a legal price determining factor causes such.

## **Payment**

1. At all times Our Mapp is entitled to request certainty from the customer for the correct and timely fulfillment of its payment obligations.
2. In case delivery occurs in parts, every part can be charged separately by Our Mapp, unless agreed otherwise in writing with the customer.
3. Payment shall be made within 15 days after the invoice date.
4. In case of a payment default, Our Mapp is entitled to suspend or cancel the execution of the agreement and any other related agreement.
5. All payments shall be transferred to a Dutch bank account number provided by Our Mapp.
6. All payments received from the customer shall first be applied to the payment of all costs, expenses and accrued and unpaid interest and subsequently to the repayment of the oldest overdue invoices, even in case the customer states that such payment relates to other invoices overdue.
7. The customer waives its right to set off (*verrekenen*) any amount due by Our Mapp. The customer is not entitled to set off any amount.
8. Transferring payments by the customer to Our Mapp through electronic means, including via the internet and by credit cards, is at the customer's own risk. Our Mapp is not liable for any damages of the customer which are connected to or are the result of such payments through electronic means. Providing credit card details by the customer to Our Mapp via the internet or otherwise is at the customer's own risk.
9. Our Mapp maintains the right to request a payment in advance of 50 to 100 per cent to newly registered enterprises.

## **Accounts and registration**

1. The customer can create an account or otherwise register on the Website. Our Mapp reserves the right to refuse or cancel any such registration, for example in the event of irregularities.
2. The login details are strictly personal and must not be disclosed to third parties. The customer is responsible for his login details, even in case this is done without his knowledge.
3. The customer shall immediately alert Our Mapp in case he suspects that his login details are known by an unauthorized third party or in the event of irregularities.
4. The customer may not create or manage more than one account. Moreover, the customer shall not be allowed to register or manage an account (again) after Our Mapp has denied the request of the customer to create an account or after cancellation of the registration.

## **Delivery**

1. At all times the place of delivery is – except where stated otherwise in writing – the customer's actual registered office or the registered office that is specified during the order process and/or the registered office of the party to the agreement.
2. The delivery terms included in offers/proposals, confirmations and/or contracts are given in good conscience. They will be complied with to the extend possible, though they can never be considered as a final date.
3. The customer is obliged to enable Our Mapp to perform the delivery.
4. The customer guarantees for its own account and risks:

- a. to provide the support that is necessary for Our Mapp to conduct the performance;
  - b. to purchase the ordered products and/or services; and
  - c. to enable the delivery to occur under average working conditions, during average working hours from 8 a.m. to 6 p.m.
5. In case the ordered products and/or services are offered to the customer, yet delivery is not possible due to the fact that the customer did not fulfill its obligations under paragraph 3 and 4 of this Article, the delivery will be considered declined. From this moment on, the customer is in default without the requirement of a formal notice of default from Our Mapp. The day of refusal of the delivery is considered to be the delivery date of the ordered products and/or services. From this moment on, the products are at the customer's own risks as stated under Article 'Transfer of Risk' of these General Terms and Conditions.
6. Notwithstanding the obligation to pay, the customer is entitled to repay the damages Our Mapp has suffered as a result of the refusal referred to under paragraph 5 of this Article, including the costs of storage and transport. The transport costs are based on local common rates.

## **Transfer of risk**

Notwithstanding the contents of the agreements made between Our Mapp and the customer with respect to the costs of transport and insurance, the products are at the risk of Our Mapp, until the moment such products are in the actual power of disposal of property of the customer or of any third party hired by the customer by means of signing bills of lading, signing lists and/or packing lists or actual delivery.

## **Retention of title**

1. The ownership of products delivered to the customer by Our Mapp shall transfer to the customer once the customer has met all the terms that Our Mapp may request based on all agreements made with the customer and the related services or activities performed.
2. Notwithstanding what is stated in paragraph 1 of this Article, the customer is entitled to use the products received from Our Mapp for its normal business operations.
3. The customer is not allowed to encumber, pledge, transfer as security and/or to loan or to loan for consumption and/or to license products that are delivered under retention of title (*eigendomsvoorbehoud*) in any way. In addition, the customer is not allowed to modify the products in any way.
4. In the event the customer fails to fulfill its obligations, Our Mapp is entitled to retrieve the products that belong to Our Mapp from where they are at the expense of the customer.

## **Right of complaint**

1. During or immediately after the delivery the customer needs to inspect whether the delivered products and/or the performed services comply with the agreement.
2. If the customer did not perform aforementioned inspection or did not inform Our Mapp regarding the defects in writing within the applicable term as mentioned hereafter the customer loses his right to claim.
3. Visible defects need to be reported in writing to Our Mapp within five business days after the delivery and/or performing the relevant service.
4. Hidden defects need to be reported in writing immediately after the customer discovered them yet within two months after delivery of the products and/or performing the service at the latest.
5. Products subject to the claim may only be returned to Our Mapp with explicit prior permission from Our Mapp.  
Returns need to be provided with the original packaging. Returns need to occur in accordance with instructions from Our Mapp at all times. Our Mapp reserves the right to appoint an address to which the product subject to the claim must be sent to.
6. If according to Our Mapp there are justified and properly submitted complaints, Our Mapp is obliged, this at her choice and taking into account the customer's interests and the nature of the complaint, to

- either replace/exchange the delivered products and/or performed services or to grant a price discount.
7. The right of complaint expires in case the delivered product is not in the same condition as it was during delivery.
  8. Complaints regarding invoices need to be submitted in writing within five business days after the date of sending the invoice.

## **Liability**

1. The limitation mentioned in paragraph 1 of this Article applies also in the event that Our Mapp is held liable by the customer for reasons other than this agreement.
2. Direct damage means exclusively:
  - a. any reasonable costs incurred by a party to repair the default by the other party in order to meet the agreement. However, these damages are not reimbursed if the other party has terminated the agreement.
  - b. the reasonable costs of ascertaining the cause and scope of the damage, to the extent the determination is related to damage as referred to in the Terms and Conditions;  
and/or
  - c. reasonable costs incurred to prevent or limit damage, to the extent the suffering party is able to demonstrate that these costs have led to a limitation of direct damage as referred to in the Terms and Conditions.
3. Our Mapp shall never be liable for any indirect damage, including consequential loss, loss of profits, lost savings and damage caused by interruption of operations and all damages which are not covered by direct damage as referred to in these Terms and Conditions.
4. In the event of intent or gross negligence of the directors or managers of Our Mapp the limitation of liability is not applicable.
5. Our Mapp shall never be liable for the materials that have been made available to Our Mapp by the customer under the agreement. It is mandatory for the customer to take out a sufficient insurance regarding these materials.
6. Without prejudice to the abovementioned, Our Mapp shall not be liable in the event the damages are caused by intent and/or gross negligence and/or imputable acts or incompetent or inappropriate usage of the delivered products by the customer.

## **Indemnification**

1. The customer indemnifies Our Mapp, to the extent permitted by law, against all liabilities towards one or more third parties, arisen from and/or connected to the performance of the agreement, irrespective of whether the damage is caused or inflicted by Our Mapp or by the third parties appointed by Our Mapp (hulppersonen), by auxiliary materials or the completed Assignment.  
In addition, the customer indemnifies Our Mapp, to the extent permitted by law, against all liabilities from third parties in connection with any infringement of intellectual property rights of these third parties.
2. The customer shall take care of adequate insurance of the risks and liabilities mentioned above.
3. The customer is always obligated to make every effort to limit the damage to a minimum.

## **Force majeure and unforeseen circumstances**

1. In case compliance by Our Mapp or the purchase by the customer is delayed for more than one month due to force majeure, each party is – with the exclusion of further rights – entitled to terminate the agreement in accordance with the law. Anything that already has been performed in accordance with the agreement, shall be settled pro rata between the parties.
2. Force majeure in relation to Our Mapp shall in any case include:
  - a. the circumstance where a performance (including a performance of the customer) that is important regarding the performance to be executed by Our Mapp has not, not in a timely manner or not properly, been executed;

- b. strikes;
  - c. traffic obstructions;
  - d. acts of government that prevent Our Mapp from timely and/or proper fulfillment of its obligations;
  - e. riots, civil disturbance, wars;
  - f. extreme weather conditions;
  - g. fire; and/or
  - h. transport disruptions.
3. In case an unforeseen circumstance of such a nature occurs that the customer cannot expect Our Mapp to fulfill because of equity or natural justice, the judge can terminate the agreement as a whole or partially at the request of one of the parties.

## Right of retention

Our Mapp is entitled to retain possession of all customer's products that Our Mapp possesses for the customer, until the customer has fulfilled its obligations towards Our Mapp, with which the concerning products have direct or sufficient coherence. In case Our Mapp loses control over products covered by this right, Our Mapp shall be entitled to claim these products as if Our Mapp was the owner.

## Termination

1. Each party is entitled to terminate the agreement with immediate effect, as a whole or partially, without any further notice of default or judicial intervention, in the cases described below and insofar as granted below:
  - a. in case the other party has applied for suspension of payments (*surseance van betaling*), in case the other party has obtained suspension of payments or in case the other party has been declared bankrupt (*faillissement*);
  - b. in case the company of the other party is liquidated voluntarily or involuntarily (*opheffing*);
  - c. in case the company of the other party merges or is taken over (*fusie of overname*);
  - d. in case a substantial part of the assets of the other party is seized and/or (*beslaglegging*);
  - e. in case other circumstances occur in which case the continuation of the company cannot reasonably be required.
2. Each party is entitled to terminate the agreement in the event the other party – after a notice of default in writing that is as clear and detailed as possible and includes a proposal for a reasonable period of time to correct or repair the defects – fails attributable to meet its essential obligations under the agreement, provided that the defects justifies the termination.
3. In the event the agreement is terminated, the claims of Our Mapp are immediately due and payable by operation of law and without any notice of default. In the event Our Mapp suspends the fulfillment of its obligations, Our Mapp maintains its claims deriving under Dutch law and the agreement.
4. In any case Our Mapp maintains the right to claim (full) damages.

## Intellectual property

1. Our Mapp guarantees that products delivered by it do not infringe any Dutch patents, design rights or any other industrial or intellectual property rights of third parties.
2. Nevertheless if Our Mapp has to acknowledge or in case a Dutch judge determines in a lawsuit that is no longer appealable, that any product that any product delivered by Our Mapp infringes any of the third party's right as referred to under paragraph 1 of this article, Our Mapp shall, at its own discretion, (i) replace such product with a product that does not infringe this right, (ii) acquire a right of licence in this respect, or (iii) take back such product against repayment of the paid sum, reduced by typical depreciations, without being required to further compensation.
3. In case the customer does not inform Our Mapp in a timely manner or not in full regarding the claims of third parties as referred to in paragraph 2 of this Article, the customer will not be entitled to the rights of performance as referred to in paragraph 2 and, in addition, Our Mapp has not been able to properly defend its right in this matter as a result thereof.

## **Transfer**

The customer is not entitled to transfer its rights and obligations arising from any agreement concluded with Our Mapp to third parties, without the written permission of Our Mapp.

## **Privacy and security**

1. Our Mapp respects the privacy of the customer. Our Mapp treats and processes all personal data transmitted to it in accordance with the applicable legislation, in particular the General Data Protection Regulation. The customer agrees to this processing. For the purpose of protecting the customer's personal data, Our Mapp observes appropriate security measures.
2. For more information regarding privacy, reference is made to the Website of Our Mapp.

## **Final provisions**

1. Any possible derogations in respect of these General Terms and Conditions may be agreed upon only in writing. No rights can be derived from these deviations with regard to future agreements.
2. The administration of Our Mapp serves as proof of purchase orders and requests of the customer, unless the customer proves otherwise. The customer acknowledges that electronic communication can serve as proof.
3. In case and to the extent that any provisions of these General Terms and Conditions are cancelled or declared invalid, Our Mapp shall draw up a new provision to replace the null/nullified provision, duly observing as much as possible the object and purpose of the annulled provision.
4. The place of the performance of the agreement is deemed to be the place where Our Mapp is located.

## **Governing law and jurisdiction**

1. All disputes between Our Mapp and customer in relation to an agreement between these parties, or the agreements concluded in the performance of or in connection with such agreement, will be submitted exclusively to the competent of the district of the location of Our Mapp, unless Our Mapp and the customer have agreed otherwise in writing.
2. All agreements, and any non-contractual obligations arising thereto, between Our Mapp and the customer to which these General Terms and Conditions apply to, are governed by the laws of The Netherlands. The Vienna Sales Convention 1980 is explicitly excluded.