

## **GENERAL TERMS & CONDITIONS OF SALE**

General terms and conditions of Barn in the City, a trade name of Barnwood B.V., established at Amsterdam, filed under number 56655843 at the Chamber of Commerce in Amsterdam, the Netherlands.

### **1 General terms and conditions**

- 1.1 Hereinafter the term "Seller" shall mean Barn in the City, established at Amsterdam, the Netherlands, the party that applies these general term and conditions of sale.
- 1.2 Hereinafter the term "Buyer" shall mean the commissioning party, purchasing party, contracting party, or any other party otherwise concluding, or wishing to conclude an agreement with the Seller, or else which the Seller makes an offer to, or on behalf of which the Seller delivers or performs.
- 1.3 These terms and conditions apply to any offer, tender, official list and notification provided by Seller and every agreement between Seller and Buyer. The terms and conditions in question are also declared to apply for third parties engaged by the Seller in the execution of agreements. In their relation to Seller these third parties may directly invoke the general terms and conditions.
- 1.4 Any terms and conditions regarding purchase, or other, that the Buyer makes use of are expressly rejected and do not bind Seller, unless and insofar as these are expressly accepted by Seller in writing.
- 1.5 Additions and amendments to these general terms and conditions may only be agreed upon in writing.

### **2 Offer and agreement**

- 2.1 Offers, tenders, official lists and other notifications provided by Seller are subject to contract, unless Seller expressly specifies otherwise. Offers shall have a thirty (30) day validity, unless otherwise evidenced by the offer.
- 2.2 In the event that Seller submits an offer, an agreement is concluded at the moment that Seller receives the signed for acceptance offer back from Buyer (the "Agreement"), unless within three (3) days of receipt Seller notifies Buyer in written not to be willing to conclude an agreement.
- 2.3 An order submitted by Buyer orally or in a purchase order or other writing without a prior offer, may be accepted, approved or filled by Seller, only after Seller confirmed the order but any resulting contract and the liabilities or obligations of Seller shall be determined solely by the Agreement.  
In the event that there is a discrepancy between the order from Buyer and the confirmation from Seller, the latter shall be binding for both parties, unless Buyer is a natural person, not acting in the course of a profession or business.
- 2.4 Buyer shall have responsibility to check any and all purchase orders for accuracy, including, but not limited to, quantities, correct material and finish selections.
- 2.5 The Agreement supersedes all previous offers and agreements pertaining to Seller's Goods. Delivery to Seller of Buyer's acceptance of a Seller's offer (according to its terms), Seller's actions in reliance on Buyer's oral acceptance of a written or oral offer, or Buyer's receipt of Goods, shall constitute a binding contract under the terms of the Agreement. The Agreement is subject to Seller's revocation or cancellation without liability until it is approved by Seller. Notice of such approval may be furnished to Buyer in the form of an acknowledgement, shipment, or other form of express approval.

- 2.6 The Agreement is a final, complete and exclusive statement of the agreement of the parties. Seller is willing to negotiate written changes to these terms and conditions, but reserves the right to make an adjustment in the price of goods. No modifications, limitations, waivers or discharge of the Agreement or any of its terms shall bind Seller unless in writing and signed by Seller's authorized employee. Notwithstanding anything to the contrary in the Agreement, no modifications, limitation, waiver or discharge of any provision of the Agreement shall affect Buyer's liabilities to Seller accrued prior thereto. Seller may correct unilaterally any mathematical and typographical errors in the Agreement. A course of performance, course of dealing, or customs in the trade shall not constitute a modification or waiver by Seller of any right by Seller.

### **3 Execution of an agreement**

- 3.1 In the event that Seller delivers Goods to Buyer, Seller will execute her obligations towards Buyer to the best of her knowledge and ability.
- 3.2 Seller shall determine in which way she will execute her obligations towards Buyer and in doing so, shall take the wishes of Buyer into consideration as much as may reasonably be expected.
- 3.3 Goods delivered based on an Agreement (furniture and/or boards and wall cladding), comply with the Agreement if they fall within the standard tolerance for measurements and weights and, if applicable, quantities, unless Seller and Buyer have agreed in writing on specific quality requirements or quality standards.
- 3.4 The pictures, samples and models provided by Seller to Buyer shall merely serve an indicative purpose. The goods eventually delivered need not be in accordance therewith, because the materials used by Seller are naturally (weathered) products.
- 3.5 All delivery terms given by Seller are indicative. With the exception of payment terms, the delivery terms agreed upon shall not be considered final, unless otherwise agreed upon in writing.
- 3.6 In case of delayed delivery Buyer shall not have the right to deny the purchase or payment of the goods.
- 3.7 Seller retains the right, after due consultation with Buyer, to execute the Agreement in portions and to invoice these portions.

### **4 Delivery**

- 4.1 By delivery is meant the actual provision to Buyer of the goods pertaining to the Agreement.
- 4.2 All Goods shall be delivered Ex-Works, at the location set forth in the final invoice or Agreement (as defined by the international Chamber of Commerce, Incoterms 2010) Seller notifies Buyer that the goods are ready for Buyer to purchase, notwithstanding the means of transport agreed upon.
- 4.3 Export licenses or authorizations necessary for the export of the Goods shall be the responsibility of Buyer, and Seller provide such information as may be reasonably necessary to enable Buyer to obtain such licenses or authorization(s). Buyer shall undertake such arrangements as necessary for the Goods to be covered by any duty deferral or free trade zone program(s) of the country of import.
- 4.4 In case the goods are delivered by Seller to an address indicated by Buyer the costs for transport and shipping, government duties and taxes, including costs of insurance shall be borne by Buyer. In the event that Buyer is a natural person, not acting in the

course of a profession or business, Seller will no later than at the close of the Agreement in which the transport arrangements were made, advise on the costs of this transport. Buyer must ensure that the site of delivery can be reached freely and be accessed easily.

- 4.5 Seller shall deliver the Goods in accordance with the Agreement. Delivery times and dates are merely estimates, as well as lead times or any other deadlines, and Seller cannot be held liable for any damages as a result of delay in delivery of the Goods. Unless otherwise agreed in writing, failure to meet delivery times or delivery dates stated shall never be considered fatal, and if the time for delivery is exceeded, Buyer shall not be entitled to cancel or terminate the Agreement, or to claim any damages.
- 4.6 If any delivery period or lead time risks to be exceeded, Seller will inform Buyer as soon as reasonably possible and the parties will enter into consultations in order to determine a new delivery period.
- 4.7 Seller is entitled to engage the services of third parties for the execution of an Agreement. Seller is entitled to make partial deliveries.
- 4.8 Unless agreed in writing differently, delivery of Goods at the location set forth in the final invoice or Agreement shall be made Ex Works as this term is defined in the Incoterms 2010. Buyer must accept delivery of Goods during normal business hours, failing which all costs arising thereof (including storage charges and freight charges) shall be charged in conformity with Seller's rates or local charges. The risk of loss will transfer to Buyer at the moment the Goods are delivered Ex Works and are at the disposal of Buyer.

## **5 Compensation and payment**

- 5.1 Prices are excluding VAT and other government duties and taxes levied and are based on delivery at the location set forth in the final invoice or Agreement Ex-Works, as defined in the Incoterms 2010.
- 5.2 Buyer shall pay all applicable sale or other taxes levied with respect to Goods (and replacements) and the agreement, unless exempt therefrom.
- 5.3 If the Buyer will not be the end consumer Buyer shall furnish Seller with a resale certificate which has been issued by an appropriate governmental authority. Buyer hereby agrees to indemnify and hold Seller harmless for any and all taxes that are the responsibility of Buyer and penalties or fines assessed against Seller or Buyer related thereto, whether or not due to Buyer's claimed exemption from such imposition.
- 5.4 In the event of an amendment of the price, after concluding the agreement, but prior to delivery, this amendment will not influence the price agreed upon if this occurs within two months after concluding the agreement. Price increases that occur after the aforementioned period are at the risk of the Buyer. In the event that the Buyer is a natural person, not acting in the course of a profession or business, Buyer will then have the right to terminate the agreement with respect to the relevant good or service.
- 5.5 After the down payment, fifty percent (50%) of the total purchase price the goods are placed on order as specified in the offer. After the goods arrive at the warehouse the remaining fifty percent (50%) of the total purchase price will be invoiced. Delivery will take place after payment of the total purchase price.
- 5.6 Each payment must be made within fourteen (14) days of the invoice date, unless otherwise specified, at net present value, while Buyer will not be entitled to any discounts, except for discounts expressly agreed upon. Payment by check is not allowed. The right of Buyer to settle any amounts owing to Seller will be expressly

- excluded, unless Buyer is a natural person, not acting in the course of a profession or business.
- 5.7 Buyer will be in default of payment towards Seller, without a demand or notice of default being required, if prior to expiry of the term as referred to in article 5.5, no full payment has been made, or else in the event that suspension of payment, bankruptcy or the statutory debt adjustment of Buyer has been filed for or has been declared.
- 5.8 In the event that after expiry of the term referred to in article 5.5, no full payment has been made, Buyer will then owe Seller the statutory interest increased by a three percent (3%) per month surcharge on the amount not paid up to the day of full payment.
- 5.9 In the event that Seller takes (extra-) judicial measures, regarding failure by Buyer to comply with any of his obligations, the costs thereof will be borne by Buyer. These costs are set at no less than fifteen percent (15%) of the principal sum with a minimum of forty Euros (€ 40,00), without prejudice to the right of Seller to claim full compensation.
- 5.10 Payments made by Buyer to Seller shall be applied firstly to deduct from costs incurred by Seller, then to deduct from the interest that has fallen due and then from the invoice of Seller that has been outstanding for the longest period of time. Seller has the right to deviate from this sequence of allocation and to have payments on account of deliveries and/or services, interest and/or costs payable by Buyer to Seller applied to deduct in a sequence to be chosen by Seller.
- 5.11 Seller may from time to time demand different terms of payment from those specified herein whenever it reasonably appears that Buyer's financial condition requires such change, and may demand assurance of Buyer's ability to pay whenever it reasonably appears that such ability is in doubt. Such demand shall be in writing and Seller may upon making of such demand, stop production and suspend shipments hereunder. If, within the period stated in such demand, Buyer fails or refuses such different terms of payment, or fails or refuses to give adequate assurance of his ability to pay, Seller may at Seller's option treat such failure of refusal as a repudiation of any portion of an accepted order that has not been fully performed in all events, time shall be of the essence with regard to Buyer's payment obligations to seller hereunder.
- 5.12 At first request from Seller, Buyer is obliged to provide security for that purpose in order to comply with his obligations. At all times Seller is entitled to deliver goods C.O.D., to demand advance payment or to lay down other conditions of payment.
- 5.13 With respect to amounts properly invoiced hereunder, Buyer shall have no right of offset by virtue of any claim against Seller, unless and until such claim has been finally adjudicated in favor of Buyer by a court of competent jurisdiction and such adjunction is not subject to appeal, or Seller has acknowledged the validity and amount of such claim in writing.
- 5.14 Seller may require a purchase money security interest or letters of credit, or any other form of security, at all times. If requested by Seller, Buyer will authorize Seller to file a financing statement reflecting a purchase money security interest and Buyer will record such purchase money security interest on its books. If Buyer does not meet Seller's request to provide security, Seller shall be entitled to terminate the Agreement or to suspend its obligations.

## **6 Suspension and termination**

- 6.1 In the event that Buyer fails to comply, or fails to comply adequately or in time with any obligation resulting from an agreement concluded with Seller or any obligation resulting from these general terms and conditions, causing Buyer to be in default, Seller shall have the right to suspend or terminate the execution of the agreement in whole or in part, without the necessity of court proceedings, without Seller being liable to pay any compensation and without prejudice to the rights Seller is entitled to, for that matter.
- 6.2 Furthermore, Seller is entitled to terminate an agreement in whole or in part without the necessity of court proceedings, without further notice of default in case of (an application for) suspension of payments, (a petition for) bankruptcy, liquidation or granting of statutory debt adjustment by Buyer.
- 6.3 In case Seller terminates the agreement with Buyer in whole or in part, under the terms of article 6.1 or 6.2, Buyer shall be obliged to compensate Seller for the damages incurred.
- 6.4 In case of complaints (including complaints pursuant to article 8) Buyer shall have the right to only suspend payment of such a portion of the invoice as is in reasonable comparison to the content and gravity of the complaint. This does not relieve Buyer from his obligation to pay the remainder of the invoice within the term agreed upon.

## **7 Inspection and Rejection**

- 7.1 Buyer shall inspect all shipped Goods immediately following arrival thereof at the destination, and shall give written notice to Seller within fourteen (14) working days of the receipt thereof of any claim that the Goods are nonconforming or damaged, provided that a reasonable inspection should have revealed such nonconformity or damage, or of any claim of shortage of Goods. If Buyer shall fail to give such notice within such time period, Goods shall be deemed to conform to the terms of an accepted order, and Buyer shall be deemed to have accepted Goods. After expiry of the aforementioned terms, the delivery will be considered to have been irrevocably and unconditionally accepted by Buyer. Any legal action must be brought no later than one year of the complaint being made in good time at the risk of such a claim lapsing.
- 7.2 Except for the obligations stated herein, Seller's responsibility for Goods ceases once Goods have been received and not rejected in accordance with this Section 7.
- 7.3 Buyer shall promptly notify Seller in writing of any alleged damage in any Goods purchased from Seller, in reasonable detail to the satisfaction of Seller. Seller has the right to fully inspect any Good claimed nonconforming or damaged before making a final determination of the claim.
- 7.4 Buyer must keep alleged damaged Goods at the disposal of Seller at all times and allow for Seller to investigate these within ten (10) working days of the complaint.
- 7.5 In the event that the complaint by Buyer, with due observance of the provisions mentioned above is justified, Seller will within a reasonable term, at her discretion and insofar as possible:
- a. deliver what is lacking;
  - b. repair the items that have been delivered;
  - c. replace the items that have been delivered.
- In the event that Seller is in default of the aforementioned, Buyer will have the right to terminate the agreement relevant to the item delivered in whole or in part.

7.6 In the event any Goods are determined by Seller to be nonconforming or damaged, written consent is required by Seller for Buyer to return said Goods. No replacement is allowed for nonconforming or damaged Goods returned without such prior written consent by Seller. Written consent sent to Buyer by Seller shall accompany all returned Goods; otherwise shipment of Goods shall be refused and returned to Buyer at Buyer's cost. Returns shall be made within fifteen (15) working days of written consent being given to Seller. Buyer's failure to comply with this Section 7 shall result in Buyer's claim for return deemed conclusively abandoned. Buyer is responsible for properly tagging, identifying, and packing returned Goods.

## 8 **General Limited Warranty**

8.1 The warranties obligation from Seller, for goods delivered does not extend further than the obligation by Seller to warrant that the goods delivered, with due observance of the provisions referred to in article 3, conform with the agreement.

8.2 Seller warrants to Buyer only that the portions of Goods manufactured by Seller shall be free from manufacturing defects in materials and workmanship which are discovered within the warranty period, subject to the disclaimers and limitations of the Agreement. The length of a warranty period shall be the longer of one (1) year from date Seller delivered the Goods to the Buyer or such other express written warranty period as may be provided by Seller in its sole discretion. In each case, any warranty offered is not a warranty of performance, but a limited warranty as to the condition of Goods at the beginning of the warranty period. Because Goods may be subject to a wide variety of use, installation, maintenance and cleaning, the warranty is only against such defects and not against any other failures such as, but not limited to, those due to wear and tear, and normal maintenance are excluded from this warranty against defects.

8.3 Warranties from Seller will not apply in the event that:

- a) and for as long as Buyer is in default towards Seller in compliance with any obligations;
- b) the items have been subjected to abnormal circumstances, or else have been handled carelessly or incompetently;
- c) there is fair wear and tear resulting from normal use;
- d) assembly/installation or repairs are carried out by third parties, not called in by Seller, or else are carried out by Buyer himself, unless installation carried out by Buyer is done defectively as a result of an error in the assembly instructions provided by Seller, whilst Buyer is a natural person, not acting in the course of a profession or business;
- e) the goods have been stored for longer than thirty (30) calendar days, due to circumstances attributable to Buyer and loss of quality is plausible as a result thereof;
- f) Buyer failed to provide Seller the opportunity to investigate the faulty items within ten (10) working days of the complaint;
- g) a term of one year after delivery has expired.

8.4 With due observance of article 6.4, Buyer is not entitled to suspend his payment obligations towards Seller, or to settlement of any of his claims towards Seller, unless Buyer is a natural person, not acting in the course of a profession or business.

8.5 Barn wood and Grey Fir are natural weathered products. Cracks may occur as a result of changes in the relative atmospheric humidity and temperature of the area (inside or outside) or room, which usually are subject to change for a prolonged period of

time per season. This is inherent to the product. But a humidity of minimum 40% (average 40 – 60%) is absolutely required and necessary for the conservation of the Barn wood and other solid wood furniture/ panels manufactured and supplied by Barn in the City. Buyer acknowledge and agrees that Barn wood and Grey Fir are natural products and therefore unique in its characteristic identity and will show natural variations in color and composition.

- 8.6 Iced Barn wood and Iced Grey Fir consists primarily of a special coating which is applied onto the wood and is predominantly applied on furniture, wall and shower panels. Due to the irregular surface of the wood in combination with manual labor, irregularities may occur, which can be visible in color, structure and finish (tiny air bubbles, wavering effect).
- 8.7 The use of raw materials or sharp objects on the 'Iced' finish is strongly discouraged as are use of the non-prescribed cleaning and maintenance products. Exposure to direct sunlight can result in discoloration of the Iced finish. Warm objects, such as (liquid) candle wax, plates, mugs etc. above thirty (30) degrees Celsius may never be placed directly onto the Iced coating. Any damage to goods as a result of these certain circumstances can never be regarded as non-conforming goods.
- 8.8 All Goods are manufactured to industry standards and are continually tested at point of manufacture. It is Buyer's responsibility to determine local flammability code requirements and inform Seller as to such code requirements. Exposure to sufficient heat and/or flame could result in melting of the special coating and burning of the barn wood and releasing heat, smoke and gases that if inhaled could inhibit breathing and result in serious injury or fatalities. It is the responsibility of Buyer to take all necessary precautions to ensure safety and open exits in the event of fire.
- 8.9 When the 'Iced' finish is exposed to temperatures below fourteen (12) degrees Celsius, this can result in a possible shrinkage of the 'Iced' coating and could result in possible cupping of the layer or a crack.
- 8.10 Some Goods may incorporate marble. Buyer acknowledge and agrees that even marble be anti-stain treated prior leaving Seller's possession, marble is a porous material and food or liquid stains may occur if they are not removed immediately after happening. Buyer further acknowledges and agrees that Seller recommends that marble be re-treated with anti -stain at least twice a year using commercial available products. Buyer acknowledges and agrees that marble is a natural product and will show natural variations in color and composition.
- 8.11 With each piece of furniture, wall or shower panel in Iced Barn wood or Iced Grey Fir a special maintenance kit is given. The kit always comes with a clear written explanation on the maintenance and a special maintenance product. Barn in the City does not accept any liability for damages resulting from failure to comply with these regulations.

## 9 **Disclaimer and Limitation of Express Warranties**

- 9.1 THERE ARE NO EXPRESS WARRANTIES OTHER THAN THOSE CONTAINED IN THE AGREEMENT AND THE GOODS ARE PROVIDED "AS IS" AND SELLER MAKES NO CONDITIONS, WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO SELLER, INCLUDING WITHOUT LIMITATION, THE AVAILABILITY AND ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, UPTIME, MERCHANTABILITY, COMPATIBILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, ALL OF WHICH ARE, TO THE EXTENT PERMISSIBLE BY LAW, HEREBY EXPRESSLY EXCLUDED. ANY REPRESENTATIONS AS TO PERFORMANCE AND OTHER MATTERS, EXCEPT AS CONTAINED IN THE AGREEMENT, WERE FOR ILLUSTRATIVE PURPOSES ONLY AND

DO NOT CONSTITUTE A WARRANTY. WHETHER OR NOT GOODS ARE TO BE USED EXCLUSIVELY BY BUYER, THERE SHALL BE NO THIRD PARTY BENEFICIARIES TO THE EXPRESS WARRANTIES CONTAINED HEREIN. SELLER DOES NOT WARRANT ANY PORTION OF GOODS NOT MANUFACTURED BY OR NOT FURNISHED BY SELLER (WHETHER OR NOT SPECIFIED BY BUYER), BUT SELLER SHALL ASSIGN TO BUYER UPON REQUEST ALL ASSIGNABLE WARRANTIES OF SELLER'S SUPPLIERS RELATED TO SUCH GOODS. ALL DESCRIPTIONS, SHIPPING SPECIFICATIONS AND ILLUSTRATIONS OF GOODS OR SELLER AND ITS QUALITY AND OTHER SYSTEMS AND CAPABILITIES IN CATALOGUES, BROCHURES AND PRICE LISTS OR OTHERWISE PROVIDED BY SELLER ARE INTENDED FOR GENERAL GUIDANCE ONLY AND SELLER IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS THEREIN OR FOR ANY LOSS OR DAMAGE RESULTING FROM RELIANCE ON THEM. SELLER DOES NOT WARRANT THAT IT OR GOODS ARE IN COMPLIANCE WITH ANY ENTITY, ORGANIZATION OR INDUSTRY STANDARDS, GUIDELINES, OR PROCEDURES UNLESS SPECIFICALLY CONTAINED IN THE AGREEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM SELLER OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THESE TERMS OF USE.

## **10 Liability**

- 10.1 Notwithstanding cases of intentional or willful recklessness by Seller or her staff and notwithstanding the warranties provided in these terms and conditions, all liability of Seller for damages incurred directly or indirectly by Buyer, resulting from nonperformance or unlawful act attributable to Seller, her staff, are excluded. Insofar as full exclusion of liability as referred to hereinbefore is not permissible under applicable law, Seller will, notwithstanding intent or willful recklessness by Seller or her staff, under no circumstances be obliged to compensate Buyer or any of its affiliate for damages in excess of the invoiced value excluding taxes of the relevant goods delivered to Buyer.

## **11 Buyers Remedies**

- 11.1 Buyer's exclusive remedy for shortage of goods, damaged or defective goods (whether or not occurring as a result of Seller's alleged negligence or gross negligence), breach of warranty by Seller, or any other cause of action arising out of Seller's sale of goods (whether arising in contract, tort, strict liability or under any other legal theory) is expressly limited to replacement of nonconforming goods. Buyer shall have no right to withhold payment or make a reduction in price. Buyer's remedy of replacement is available only if nonconformance was not caused by Buyer's misuse, neglect, improper storage, or transportation, or by accident, fire or other hazard. Buyer's remedy for breach of warranty by Seller shall be limited to obtaining conforming goods from Seller. In no event shall Seller be liable for any incidental, consequential, special, indirect or punitive damages arising out of the sale of goods contemplated hereby.
- 11.2 Seller shall not be subject to liability for damages resulting from the handling, use or further processing of Goods furnished under this Agreement. The warranties contained herein extend only to Buyer. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability, statutes, or otherwise, except as specifically provided herein. The replacement of Goods by Seller does not give rise to any new warranty except the warranty period provided for herein shall be extended by the length of any period from the date the defective or non-conforming Goods are received by Seller until the



date replacement Goods are delivered to Buyer. Buyer shall contact Seller requesting warranty coverage plus a return authorization number and other instructions for the return of Goods to Seller or other instructions.

## **12 Disclaimer of Warranties**

- 12.1 The warranties contained herein are given in lieu of all other warranties, either express or implied, and all other warranties are hereby disclaimed by Seller, including, without limitation, non-infringement and the implied warranties of merchantability and fitness for a particular purpose. Seller does not warrant Goods shall comply with the requirements of any safety or environmental code or regulation of any National, state, municipality or other jurisdiction beyond the specific express warranties in this Agreement.
- 12.2 Subject to Seller's limitation of liability contained in this Section 12, in the event of a recall campaign related to any Good or components thereof, Buyer shall be responsible for the costs of complying with such recall campaign. If a recall campaign is mandated by a government authority and Buyer can show that the underlying defect relates to
- a. a significant deviation from applicable specifications referenced in the order, or
  - b. a material defect in materials or workmanship,
- then Seller shall reimburse Buyer for any reasonable and direct expenses which may be incurred by Buyer as a result of such recall campaign. In the event of a recall campaign related to Goods, Buyer and Seller agree to exchange information and consult with each other with respect to the need and advisability thereof.

## **13 Indemnification**

- 13.1 Buyer shall defend, indemnify, and hold harmless Seller from any and all third party claims, damages, costs, liabilities, and expenses (including reasonable attorneys' fees) of whatever nature, including under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute, or otherwise arising out of, or related to:
- c. the use, storage, sale, processing or other disposition of the Goods, supplies or materials used in connection with the Goods, or parts manufactured with the Goods, if the action or inaction of Buyer or its employees, customers or agents, [or Buyer's design specifications,] were a material or proximate cause of injuries or damages giving rise to claims against Seller,
  - d. the inaccuracy of any representation made by Buyer hereunder or any other document, instrument or agreement, and/ or
  - e. Buyer's breach of any covenant contained herein or in any other document, instrument or agreement.

## **14 Consequential, Incidental and Other Damages**

- 14.1 SELLER DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY IN RELATION TO SELLER'S GOODS. NEITHER SELLER NOR ITS OFFICERS OR AFFILIATES MAY BE HELD LIABLE WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER FORM OF LIABILITY FOR ANY CLAIM, DAMAGE, OR LOSS, (AND CUSTOMER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION), ARISING FROM OR RELATING TO ALL SUCH GOODS.
- 14.2 IN NO EVENT SHALL BUYER OR ANY THIRD PARTIES BE ENTITLED TO ANY,

HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER FORM OF LIABILITY, CONSEQUENTIAL (WHETHER DIRECT OR INDIRECT), PUNITIVE, S P E C I A L , EXEMPLARY, OR INCIDENTAL DAMAGE, I N C L U D I N G WITHOUT LIMITATION, DIMINUTION IN VALUE, LOST INCOME, PROFITS, OR SALES, BUSINESS (WHETHER ACTUAL OR ANTICIPATED) OR INTERRUPTIONS IN BUSINESS FROM SELLER OR ITS AFFILIATES. THIS LIMITATION SHALL BE ENFORCED REGARDLESS OF WHETHER SELLER HAS DEFAULTED IN ITS WARRANTY OR OTHER OBLIGATIONS. ANY LEGAL INABILITY TO LIMIT OR RESTRICT THE RIGHT OF BUYER OR A THIRD PARTY TO SUCH DAMAGES SHALL NOT AFFECT THE RIGHT OF SELLER TO INDEMNIFICATION HEREUNDER, AND UNDER NO CIRCUMSTANCE SHALL BUYER RECOVER MORE THAN THE PURCHASE PRICE. BUYER ACKNOWLEDGES THAT THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REMEDIES AVAILABLE TO BUYER AT LAW OR IN EQUITY.

- 14.3 THE LIMITATIONS ON SELLER'S LIABILITY ABOVE SHALL APPLY WHETHER OR NOT SELLER, ITS EMPLOYEES, LICENSORS OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES ARISING.

## **15 Intellectual property**

- 15.1 All intellectual property rights on works made available to Buyer or manufactured in collaboration with or for the benefit of Buyer under the agreement (documents, designs, images, drawings, samples, specimen, models, etc.) shall remain the sole property of Seller. Any documents, designs, images, drawings, samples, specimen, models in whatever phase of elaboration these are and have been delivered to or shown to Buyer shall at all times remain the full property of Seller and shall be returned to Seller following a request to do so.
- 15.2 Buyer is solely entitled to use the goods and/or information delivered or made available by Seller within the framework of the written agreement. Any permitted use does not mean that intellectual property rights have been transferred.
- 15.3 Without a prior written permission by Seller, Buyer is not allowed to copy pictures, designs, brochures, DVD's and other material or to use information on its internet site. Permission by Seller does not affect the rights of the author of the information provided.

## **16 Force majeure**

- 16.1 Apart from what it is understood to be under the law and legal precedents, force majeure also means each external cause, either foreseen or unforeseen, which Seller cannot exert influence on and which prevents Seller from compliance with her obligations towards Buyer. Seller shall not be liable for monetary damages or otherwise for the time and to extent such failure to perform is caused by:
- f. business interruption or interruption of operations at Seller of any nature and regardless of the manner of inception;
  - g. delayed or overdue delivery by suppliers of Seller or one of these or by a third party or third parties, and any other cause or causes beyond the reasonable control of Seller or its suppliers;
  - h. transport problems or obstacles of any nature, causing transport to the place of operations of Seller or transport from the place of operations of Seller to Buyers to be impeded or obstructed;
  - i. compliance with any governmental regulations and import and export restrictions

- j. war, explosion, fire, flood, accident, severe weather.
- 16.2 Seller has the right to invoke force majeure in the event that the circumstance preventing further compliance occurs after Seller should have complied with her agreement, except for in case Buyer is a natural person, not acting in the course of a profession or business.
- 16.3 In the event that Seller is unable, due to any such cause or otherwise, to fulfill Buyer's total requirements of Seller, Buyer agrees to accept, as full and complete performance by Seller, deliveries of Goods in accordance with such allocations as Seller may make. During periods when demand for available product exceeds supply, Seller may distribute its supply of raw materials and/or finished Goods among itself, for its own uses, its customers and Buyer in such manner as Seller deems practicable. Buyer agrees to accept, as full and complete performance by Seller, deliveries in accordance with such determination as Seller may make. In no event shall Seller be required to purchase material or product from third persons in the event that Seller invokes one of the above-mentioned clauses, nor shall Seller be liable for any cost increases suffered by Buyer in purchasing product from a third party.
- 16.4 In case of force majeure the obligations of Seller are suspended. In the event that the period in which it is impossible for Seller to comply with the obligations, due force majeure lasts longer than 2 months, both parties will have the right to terminate the agreement without the necessity of court proceedings and in that case, without an obligation to compensation for damages. In the event that Seller has already partially complied with her obligations at the occurrence of the force majeure, only partial termination of the agreement will be possible, namely to the extent of the part that is yet to be complied with.

## **17 No Other Terms and Conditions**

- 17.1 No modifications to these terms and conditions shall be effected by Seller's receipt or acknowledgment of a purchase order from Buyer containing additional or different terms and conditions. No statements or agreements, oral or written, shall vary or modify these terms and conditions. (This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.)

## **18 Waiver**

- 18.1 No waiver by either party of any breach of any of the terms or conditions contained herein shall be construed as a waiver of any succeeding breach of the same or any other term or condition contained herein.

## **19 Assignability; Binding on Successors**

- 19.1 Buyer shall not assign the Agreement, by operation of law or otherwise, without the express written consent of Seller. In the case of any permitted assignment or transfer of or under the Agreement, the Agreement shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assigns of the parties hereto.

## **20 Relationship of Parties**

- 20.1 Seller and Buyer are independent contracting parties and nothing in the Agreement shall make either party the agent, joint venturer or legal representative of the other for any purpose whatsoever, or grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Although third parties may be referenced, there are no third party beneficiaries to the Agreement.

## **21 Ambiguities**

- 21.1 Ambiguities, if any, in the Agreement shall not be construed against Seller, irrespective of which party may be deemed to have authored the ambiguous provision.

## **22 Language**

- 22.1 The only official version of the purchase order and all communication related to purchase order buyers will be in the English language.

## **23 Final Terms**

- 23.1 Any proceeding by Buyer for breach of the Agreement or any other right against Seller arising from or in connection with a payment cannot be filed nor maintained unless:
- a. it is commenced within one (1) year after the cause for action has accrued;
  - b. Buyer has given timely written notice to Seller of its claim as provided herein; and
  - c. buyer deposits the unpaid portion of the purchase price with the tribunal pending final adjudication.
- An action shall accrue no later than shipment of Goods. Buyer shall give Seller written notice of any claim of breach of the warranties contained herein within one hundred (100) days after the occurrence of the event upon which such claim is founded; failure of Buyer to give such written notice shall constitute a waiver of all claims.
- 23.2 If any provisions in these general terms and conditions are void or revoked by the courts, the remaining provisions remain in force Seller and Buyer shall negotiate substitute provisions that are in line with the original provisions in term of purpose and scope.
- 23.3 The parties shall always endeavor to resolve a dispute amicably, before any application is made by either party to the court.

## **24 Applicable law and designated court**

- 24.1 Unless stated otherwise in writing, any and all offers, agreements, deliveries, services or provided between the Buyer and the Seller shall be governed by and construed in accordance with the laws of The Netherlands, notwithstanding conflict of law principles, and without giving effect to the United Nations Convention on the Contracts for the International Sale of Goods.
- 24.2 Any dispute that may present itself between parties will only be referred to the competent court in the kingdom of The Netherlands, unless law or treaty by rules of mandatory law declares another court of competent.

The parties consent and agree that each such court is a convenient forum for, and has proper venue over, the resolution of all legal actions, proceedings and disputes arising out of or relating to their relationship. Notwithstanding the foregoing, in the event of non-payment by Buyer, Seller may initiate court proceedings in the United States at the competent court located in the state of residence of Buyer.

- 24.3 ANY CAUSE OF ACTION AGAINST THE SELLER, REGARDLESS WHETHER IN CONTRACT, TORT OR OTHERWISE, MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH ACTION IS PERMANENTLY BARRED.