

# BEWISYNBRA TERMS AND CONDITIONS

## 1 General

- 1.1 These general terms and conditions (the **Terms**) apply to all offers, orders and agreements whereby the party using these Terms (**Supplier**) sells and/or provides goods and/or services to a third party (**Customer**).
- 1.2 The applicability of terms and conditions of Customer is herewith expressly excluded.
- 1.3 Deviations from and additions to the Terms shall only be valid if agreed in writing between the parties.
- 1.4 Supplier may at all times assign or transfer (whether directly or indirectly) its rights and obligations under its agreements with Customer. Customer's rights and obligations under its agreements with Supplier cannot be assigned or transferred, without the prior written consent of Supplier. Any purported assignment or transfer by Customer in breach of this article 1.4 of the Terms shall be null and void.
- 1.5 If any provision of the Terms, or the application thereof to any party or circumstance, is held to be illegal, invalid or unenforceable in whole or in part under applicable laws and regulations, then such provision shall to that extent be deemed not to form part of the Terms and, to the extent reasonably possible, replaced by the parties with a legal, valid and enforceable provision that, seen in the context of the Terms as a whole, achieves as closely as possible the intention of the illegal, invalid or unenforceable provision, without affecting the legality, validity and enforceability of the remainder of this Agreement.
- 1.6 In the event that any third party stipulation contained in the Terms and/or any agreement between Supplier and Customer is accepted by any third party, such third party will not become a party to the Terms or such agreement.

## 2 Offers, orders and agreements

- 2.1 All offers of Supplier are non-binding (*vrijblijvend*), unless Supplier explicitly states otherwise.
- 2.2 All orders and all acceptances of offers by Customer, verbal and in writing, are irrevocable.
- 2.3 Supplier is bound when Supplier has accepted an order in writing. Verbal commitments or agreements by or on behalf of Supplier do not bind Supplier, except and insofar as Supplier confirms these commitments or agreements in writing.

## 3 Information

- 3.1 Customer cannot derive any rights or expectations from pre-calculations, estimates, specifications and/or any other information provided by Supplier, unless the parties agree otherwise in writing.
- 3.2 Customer warrants that the information provided to Supplier is true, accurate and not misleading. Supplier is not responsible or liable for any damages suffered by Customer due to

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Supplier relying on untrue, inaccurate, misleading or inadequate cooperation, information and documentation provided by or on behalf of Customer.

### **4 Prices**

4.1 Prices agreed by the parties are net prices and exclusive of: (i) VAT, taxes, duties and other levies, and (ii) costs of packing, loading, transport, unloading, insurance, installation, assembly and/or any other services provided by Supplier, and are valid only for delivery ex-works in accordance with INCOTERMS 2020.

4.2 If Supplier undertakes to carry out the packing, loading, transport, unloading, insurance, installation, assembly and/or to provide any other services and no price has been expressly agreed in that respect, Supplier shall be entitled to charge Customer the actual costs and/or the rates normally used by Supplier for such services.

### **5 Payment and security**

5.1 Customer shall pay each invoice to Supplier within 30 (thirty) calendar days after the date of the invoice. All payments by Customer to Supplier shall be made in euro by way of electronic transfer in immediately available funds on or before the due date for payment.

5.2 Supplier shall at all times have the right to demand full or partial payment in advance and/or otherwise obtain security for payment from Customer.

5.3 All payments by Customer to Supplier shall be made free from any counterclaim or set-off and without deduction or withholding of any taxes, duties and other levies to be deducted or withheld by applicable laws and regulations.

5.4 If Customer is required by applicable laws and regulations to make a deduction or withholding in respect of any sum payable to Supplier, such sum shall be increased to the extent necessary to ensure that, after the making of any such deduction or withholding, Supplier receives the full amount which would have been received but for such deduction or withholding.

5.5 Except as otherwise provided in writing, if Customer defaults in the payment, when due, of any sum payable Supplier, it shall pay statutory interest on the basis of Section 6:119a Dutch Civil Code at the then applicable rate.

### **6 Delivery**

6.1 Supplier will deliver the goods in accordance with the INCOTERMS 2020 ex-works, insofar as the Terms and the written agreement between the parties do not deviate therefrom.

6.2 The goods to be delivered by Supplier shall be deemed delivered upon the moment that the loading of the goods starts for transport to or on behalf of Customer from the premises of Supplier, unless expressly agreed otherwise in writing.

6.3 If Supplier expects that the agreed delivery period will be exceeded, Supplier will inform Customer as soon as reasonably possible. A failure to timely deliver the goods shall not entitle

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Customer to additional or substitute compensation or to noncompliance by Customer of any of its own obligations arising from the agreement.

- 6.4 The delivery period becomes effective and starts to run after: (i) the agreement between Supplier and Customer has been concluded, (ii) Supplier has received all documents, data and information necessary for the execution of the order and to be provided by Customer, and (iii) agreed advances and/or the agreed security have been received by Supplier.
- 6.5 Delivery periods will be extended by the amount of time that the: (i) implementation of the agreement is delayed due to force majeure, and (ii) Customer is late in the fulfilment of any obligation that is agreed to or could reasonably be expected by Supplier.
- 6.6 Customer is entitled to rescind (*ontbinden*) the sale and purchase agreement in case of late delivery not caused by force majeure, provided that the goods have not been delivered within a reasonable period (depending on the reason for the delay) after receipt by Supplier of a written notice by Customer specifying the late delivery of the goods and Customer's intention to rescind (*ontbinden*) the agreement for the sale and purchase of such goods if the goods have not been delivered within a reasonable period after receipt of the written notice.
- 6.7 Supplier has the right to deliver the goods in parts. Each partial delivery will be deemed to be an independent delivery with respect to the applicability of these conditions.
- 6.8 The quantity delivered to Customer may vary within a ten percent margin above or below the agreed volume, unless expressly agreed otherwise in writing. Non-material deviations from the agreed specifications are at all times allowed and do not result in breach of the warranty granted by Supplier under article 8.1 of the Terms.

### **7 Risk and ownership**

- 7.1 The risk in the goods to be delivered by Supplier to Customer shall transfer from Supplier to Customer upon delivery of the goods to Customer as set out in article 6.2 of the Terms, unless expressly agreed otherwise in writing.
- 7.2 Unless expressly agreed otherwise in writing, loading, dispatching, transport, unloading and insuring of the goods to be delivered by Supplier to Customer shall be effected for the risk and account of Customer, even if Supplier arranges the same.
- 7.3 All goods sold by Supplier to Customer are delivered under the suspensive condition (*opschortende voorwaarde*) that Customer fully complies with the following obligations towards Supplier existing at any time:
- (a) payment of the purchase price of goods delivered or to be delivered by Supplier pursuant to the sale and purchase agreement and/or any prior or subsequent agreements of the same nature, or services carried out or to be carried out for Customer under such agreements; and

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- (b) payment of claims for failure by Customer to perform its obligations under the agreements referred to in subparagraph 7.3(a) of the Terms, including for damages and compensation for extrajudicial and legal costs, contractual and statutory interest, fines and periodic penalty payments.
- 7.4 Customer is not entitled to pledge or otherwise encumber the goods covered by the above retention of title.
- 7.5 If any third parties impose an attachment on the goods covered by the above retention of title or wish to establish or assert rights on the same, Customer is required to inform Supplier thereof immediately.
- 7.6 Customer is required to insure and keep insured the goods covered by the above retention of title against fire, explosion and water damage, as well as against theft, and to provide Supplier with the insurance policy upon Supplier's first request.
- 7.7 Customer may only sell the goods delivered under the above retention of title which it has not yet paid in full when acting in the ordinary course of its business, however Customer may not lease such goods, encumber them with limited rights or use them as a means of payment.
- 7.8 In the event Supplier wishes to exercise its ownership rights in accordance with the above retention of title, Customer authorizes Supplier (or any third parties designated by Supplier), now for then, unconditionally and irrevocably, to enter the locations where Supplier's goods covered by the above retention of title are located and retrieve such goods there from.
- 7.9 As long as the retention of title is applicable to the goods delivered by Supplier, Customer will store the goods and label them in such a way that they are clearly identifiable as goods belonging to Supplier.

### **8 Warranty**

- 8.1 Supplier warrants that the goods and services at the moment of delivery to Customer comply with the specifications specifically agreed in writing between Supplier and Customer. Supplier makes no other warranties to Customer than the warranty in this article 8.1 of the Terms and especially not in relation to marketability or suitability of the delivered products for any particular purpose.
- 8.2 If the goods and/or services delivered do not comply with the specifications specifically agreed in writing between Supplier and Customer, Supplier will, by means of an exclusive remedy, in its sole discretion:
  - (a) correct the error, defect or breach in such goods and/or services at the expense of Supplier; or
  - (b) re-deliver such goods and/or services at the expense of Supplier; or
  - (c) refund to Customer the amounts actually paid by Customer to Supplier for the (part of) such goods and/or services.

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8.3 Customer may no longer invoke this warranty or claim any error, defect or breach in the goods and/or services, once Customer has processed or used these in any other process or fabrication.

### **9 Inspection**

9.1 Customer will examine and inspect the goods upon delivery or within 5 (five) calendar days thereafter to verify whether the goods meet the specifications specifically agreed in writing between Supplier and Customer. If Customer finds any defects during such examination and inspection, Customer will immediately thereafter notify Supplier and Customer will adhere to Supplier's reasonable instructions.

9.2 If Customer finds that the goods do not comply with the agreed specifications after he has examined and inspected the goods in accordance with article 9.1, Customer will notify Supplier within 14 (fourteen) calendar days after such discovery, providing all information required to enable Supplier to assess the validity of Customer's statement and Customer will adhere to Supplier's reasonable instructions.

9.3 Customer will not process and/or mix the goods if Customer knows and/or suspects that the goods do not comply with the agreed specifications, without first notifying Supplier of the non-compliance of the goods with the agreed specifications in accordance with this article 9.

9.4 If Customer fails to comply with any of its obligations under this article 9 of the Terms, Customer can no longer invoke non-compliance of the goods and Customer loses all rights that Customer has in respect of the non-compliance of the goods.

### **10 Force majeure**

10.1 Supplier's failure to comply with its obligations due to force majeure shall not constitute a breach and Supplier shall not be liable for any resulting damages, provided that Supplier uses commercially reasonable efforts to mitigate the effects of the force majeure.

10.2 Force majeure includes any and all events that are beyond the reasonable control of Supplier affected by such event, and includes, without limitation, any strike, lock-out or labour disputes, fire, flood, storm, extreme weather events, war, military action, riot, terrorism, blackmail, epidemic, explosion, or malicious damage, compliance with mandatory laws, failure to receive and/or obtain raw materials or services, material breakdown or malfunction of plant, machinery, hardware or software, material lack of or shortage of electrical power. If any of such aforementioned events occurs at third parties on whom Supplier depends for the implementation of the agreement, such event shall also be considered to constitute force majeure.

10.3 If the force majeure affects an agreement or multiple agreements for a consecutive period of more than 90 (ninety) calendar days, each party is entitled to rescind (*ontbinden*) the affected agreements in whole or in part by written notification to the other party.

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10.4 For the avoidance of doubt, Supplier is also entitled to invoke force majeure in respect of its obligations included in article 8 of the Terms.

### 11 Liability

11.1 Supplier's liability in connection with any defects and/or errors in the goods and/or services delivered to Customer is at all times limited to the fulfilment of the warranty described in article 8 of the Terms.

11.2 Supplier's liability in respect of any and all claims under and/or related to the agreements with Customer, regardless of the grounds thereof, is at all times limited to: (i) reasonable expenses that Customer would have to incur to make Supplier's performance in compliance with the relevant agreement, (ii) reasonable expenses incurred by Customer to determine the cause and scope of the damage, insofar as such determination relates to damages for which Supplier is liable under this article 11.2 of the Terms, and (iii) reasonable expenses incurred by Customer to prevent or to mitigate damages, insofar as Customer demonstrates that these expenses resulted in mitigation of damages for which Supplier is liable under this article 11.2 of the Terms.

11.3 Supplier's aggregate liability in respect of any and all claims under and/or related to an agreement with Customer, regardless of the grounds thereof, shall not exceed an amount equal to the lower of: (i) the invoice value of the products in connection with which Supplier is liable, or (ii) EUR 350,000 (three hundred fifty thousand euro).

### 12 Intellectual property

12.1 All rights, title and interest to Supplier's intellectual property and trade secrets remains with Supplier and no right, title or interest to such intellectual property and trade secrets is transferred or assigned to Customer, unless explicitly agreed otherwise in writing.

12.2 Supplier and Customer agree that all intellectual property and trade secrets that are created under and/or in connection with the agreements between the parties shall vest in Supplier. In furtherance thereof, Customer herewith transfers and assigns all rights, title and interest in such intellectual property and trade secrets to Supplier and Supplier herewith accepts such transfer and assignment.

### 13 Confidentiality

Supplier and Customer shall, and shall procure that any person to whom they disclose information as referred to below, keep confidential and not disclose or make available to anyone the existence or contents of their agreements, the subject matter or process of discussions or negotiations or any disputes between the parties in connection with their agreements, or any information of a secret, confidential or commercially sensitive nature received by either party relating to the other party or its respective business. The confidentiality obligations will not apply if and to the extent: (i) such information is or comes into the public domain other than as result of a breach of any confidentiality undertaking by that party, (ii) disclosure is required by applicable laws and regulations (including the regulations of any relevant stock exchange), or pursuant to an order of a competent regulatory authority, (iii) to the extent reasonably necessary

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to conduct the defence of a claim, or to enforce any rights, or to fulfil any obligations, under the agreement(s) between the parties, or (iv) with the prior written approval of the other party.

### **14 Applicable law and forum**

- 14.1 Subject to article 14.2 of the Terms, the Terms and all agreements between Supplier and Customer (including the provisions of this article 14) and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with the laws of the Netherlands. The application of the United Nations Convention on Contracts for the International Sale of Goods is herewith expressly excluded.
- 14.2 Each Party hereby excludes or irrevocably waives its rights arising out of Section 7:402 Dutch Civil Code, Section 7:403 Dutch Civil Code and Section 7:408 Dutch Civil Code (if applicable).
- 14.3 All disputes arising out of or in connection with the Terms and all agreements between Supplier and Customer, including regarding the existence or validity of such agreements (and this article 14.3 of the Terms), and any non-contractual obligations arising out of or in connection with such agreements, are subject to the exclusive jurisdiction of the competent court in Rotterdam, the Netherlands, without prejudice to the right of appeal.