



## General Conditions of Sale

**Vogel's Products BV**  
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### **Article 1 - APPLICABILITY**

1.1 These General Conditions of Sale ('General Conditions') apply to all our offers and to all contracts, including but not limited to purchase orders, we entered into with the customer. These General Conditions, together with the order confirmation and attached riders, if any, shall constitute the entire contract between the customer and us and shall supersede all other agreements with respect to the subject matter hereof. Any deviations must be explicitly agreed upon in writing.

1.2 References by the customer to its own purchasing conditions, contract terms or other conditions in any purchase order or other form of written confirmation sent by the customer, shall not bind us, notwithstanding our act of delivery of the products to the customer in response thereto. The applicability of any conditions used by the customer is explicitly rejected.

1.3 Any provision of the order or these General Conditions which is finally determined to be invalid or unenforceable in any jurisdiction shall be ineffective only to the extent of such invalidity or unenforceability, without invalidating or rendering unenforceable the remaining provisions, and any invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. A legally invalid provision shall be replaced by an alternative valid provision which approximates as closely as possible in nature and scope to the legally invalid provision, on the terms of which parties shall consult further, if necessary.

### **Article 2 - OFFERS**

2.1 All our offers are without engagement. A contract is concluded as soon as our authorised personnel has confirmed an (individual) purchase order placed by the customer. We are entitled to consider orders issued by the customer, to be issued by duly authorised employees thereof.

2.2 Orders and confirmation of the orders must be in writing; confirmations might take place by means of pro forma invoices. Orders, confirmations and rejections transmitted electronically in our specified format under our specific protocol and/or through e-mail will be considered to be written or in writing. Proof with respect to the content of these communications will follow from the data stored in or derived from our administration. The provisions in this paragraph also apply to any amendments, additions or varying terms to orders already placed. Therefore, an amended order placed by the customer does not bind us, unless the customer has placed an amended order within 48 hours after our written confirmation of the original order and such amended order has itself been confirmed in writing by us. For orders where, because of their nature or size, no offer or order confirmation is sent, the contract is concluded at the moment we actually begin to carry it out; in such cases the invoice will be considered as the order confirmation and at the same time is deemed to correctly and completely represent the contract.

2.3 We shall reserve the sole right to make minor alterations in any product which is part of a confirmed purchase order at any time, without incurring any obligation towards the customer.

### **Article 3 - DELIVERY**

3.1 Unless otherwise agreed in writing, delivery term is Free Carrier (FCA ICC Incoterms 2020).

3.2 We shall not be liable for any delay in delivery. The time of delivery will have been given approximately. The delivery time is extended with the time during which the customer remains negligent to observe any obligation of payment or any other obligation resulting from the order or from any previous or after order. In case other circumstances than those known to us at the moment we determined the time of delivery arise, we are entitled to extend the delivery period needed to deliver the products under these circumstances.

3.3 We have the right to deliver the products and invoice the customer if we are able to deliver 95 per cent of the products mentioned in the relevant purchase order.

3.4 We will be entitled to deliver the goods in part deliveries, in which case each part delivery will be construed as a separate contract.

3.5 If the products have not been accepted by the customer when delivered, the latter is in default. In that case we are entitled to store the products or to have them stored at the expense and at the risk of the customer, to invoice, and if the customer does not meet its payment obligation in time, to make use of our right to cancel the order. In this case, the customer is also liable for our transport costs.

3.6 If the customer orders products to be delivered on call, they must actually be called and taken within the period of call agreed. If the customer does not meet said obligations within eight days after the end of the period of call, we shall be entitled to send an invoice, or to cancel the order, or any previous or after order and/or any other contract with the customer.

3.7 Before or during the performance of the order we, if we have a good reason to fear that the customer will not be able to fulfil its obligations of payment in time to us, shall be entitled to suspend the fulfilment of our obligations until the customer has given sufficient security that payment will take place. If an order is accepted by us without an irrevocable letter of credit, or other similar form of sufficient security, at our sole discretion, the customer is always obliged to give additional security at our request. If the customer fails to give such security, we shall be entitled to cancel the order(s) and/or any other order; the customer is liable for any damage we suffered. The above requirement does not release the customer from any previous obligation.

### **Article 4 - PRICES, PACKAGING AND RETURNS**

4.1 In so far as it has not been agreed otherwise with the customer in writing, our

prices will be FCA as mentioned in Article 3.1, in EURO and including packaging, and do not include possible value-added tax. Our prices will be added up with all taxes, levies or other costs relating to / as a consequence of the European Directive (and the local regulations hereto) on Waste Electrical and Electronic Equipment (WEEE), to the extent permitted under statutory law.

4.2 The prices shall be without engagement in respect of any repeat orders and/or follow-up orders.

4.3 We are entitled to adjust the order price in the event that one or more of the factors determining the (cost) price - including, but not limited to costs of (ancillary or raw) materials, parts, freight rates, wages, social security contributions, customs, import or export expenses, taxes, and also price-adjustments as a result of currency price changes or change in the interest rate, or any change of the currency of the prices - have increased. In these cases, the customer has the right to cancel the relevant parts of the purchase order if the price adjustment is more than a ten per cent increase.

4.4 Unless agreed otherwise in writing, we shall - if necessary and at our sole discretion - provide the products with the standard Vogel's packaging, on pallets. Unless otherwise agreed with the customer in writing, packaging materials are not taken back by us.

4.5 Products will not be accepted for return without our prior written consent and unless the products are returned in accordance with any applicable return procedure.

### **Article 5 - PAYMENT**

5.1 Unless agreed in writing otherwise, payment is to be made in EURO within 30 days after invoice date, without any right to discount, suspension or set-off. Each payment by the customer will be used first for the settlement of any collection and internal (administration) costs, then for the interest due, and after that, for the settlement of any outstanding claims in order of age beginning with the oldest.

5.2 The claim for payment of the purchase price shall be due and payable at once if the customer is, amongst other circumstances, declared bankrupt or files a petition for an official moratorium, if the appointment of a guardian over it has been applied for, or any products or claims of the customer are attached, and also if an administrator or receiver has been appointed over (part of) its property or the customer is in liquidation or has been wound up.

5.3 The customer shall be in default after the expiry of the payment term without notice of default being required. The date on our bank or giro statement when payment is recorded as received applies as the date on which payment has occurred.

5.4 If the customer does not pay the invoice price due in time, he will owe us an interest of 1.5 % of the invoice price for every month or part of the month by which the term of payment has been exceeded.

5.5 All extra-judicial and judicial costs, internal as well as external, incurred by us where we have become involved in any way in a judicial procedure against the customer, both as plaintiff and defendant, will be borne by the customer.

5.6 Any credit entries can only be made by our Board of Directors or authorised personnel as mentioned in Article 2.1; rights can only be derived from a credit entry if the credit note is provided with a signature of one of them.

5.7 Complaints and/or questions regarding our invoices must be notified to us in writing and with the statement of the reasons and must be received by us within ten (10) days of the invoice date, failing which the customer shall be deemed to have approved the invoice.

5.8 The Customer is responsible for compliance with the European Directive (and the local regulations hereto) on Waste Electrical and Electronic Equipment (WEEE).

### **Article 6 - INSPECTION AND COMPLAINTS**

6.1 The customer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances, taking into account the following.

6.2 Each claim by the customer shall be notified in writing to us, specifying (i) the goods concerned, (ii) the date of purchase and (iii) the nature of the defect within the warranty term.

6.3 In case of visible deficiencies in the goods and/or failing quantities of the goods, the customer must submit a to us by e-mail and record these deficiencies and/or shortfalls on the relevant transport document within 5 days after receipt of the goods.

6.4 For all other complaints with regard to the goods a term of 5 days after the date on which the shortcomings and/or shortfalls became known to the customer or might reasonably have been expected to become known applies for a complaint to be submitted to us by e-mail.

6.5 Any failure by the customer to declare default within the time specified in articles 6.3, and 6.4 above, shall result in the loss of any claims whatsoever in this respect.

6.6 Complaints of any nature whatsoever will not postpone the customer's obligations to pay and can only be brought to our notice in writing within the periods laid down in this article.

6.7 In any event, all claims of the customer will become time-barred unless legal proceedings will have been instituted before the Court of competent jurisdiction within 9 months after the date of delivery, or the date that delivery should have been made.

6.8 Minor variations within our customary tolerances shall not entitle the customer to file a complaint, or demand compensation, or request that the order is cancelled.

6.9 Upon discovery of any defect to a substantial number of the same products



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of Vogel's, the customer shall immediately cease the marketing of the products concerned and shall give us all such assistance as we may require for the purpose of examining the complaint. We refer to Article 10.1 below.  
6.10 Any defects regarding part of the products that relate to one purchase order do not give rise to an allowable claim by the customer to reject all of these products which form part of this purchase order.

### **Article 7 – RETENTION OF TITLE**

7.1 After delivery of a specific order, the products shall remain our property until such time we have received full payment:  
a) for the products supplied concerning this specific order, or previous or after orders, and  
b) of claims arising from the non-performance by the customer of any orders, such as damages, penalties, interest and costs.  
The mere fact that we do not have, or do not have anymore, any claim to the customer at a certain date shall not bar the validity of the continuation of our retention of title if we will have a claim against the customer at a later date.  
7.2 If the products are actually in the customer's possession before they are paid for, they shall be deemed to have been shipped/transported on a consignment basis and we shall be entitled at any time to recover these products (entering on to the customer's properties for this purpose, if necessary) or demand their return forthwith.  
7.3 Prior to the date of acquiring the property of the products, the customer shall not be entitled to dispose of the products or to use the same as collateral for any loan or to pledge the same as security for any debt or mortgage the same or otherwise to transfer or assign the same to any third party. However, the products may be used by the customer in the normal course of its business.  
7.4 In case of any amounts due and payable, the customer shall enable us forthwith to regain possession of the products supplied by us, without any prior notice of default or judicial intervention being required for that purpose. In anticipation of the event that the customer should fail to fulfil any of its obligations (of payment or otherwise) to us, and without prejudice of any of our rights, we are hereby given irrevocable authorisation by the customer to recover possession of the products forthwith upon our demand, without any prior notice or judicial intervention being required for that purpose.  
7.5 It shall be the customer's duty to give us immediate written notice in the event that third parties (may) enforce any claims upon any of the products which are subject to our retention of title.  
7.6 Every payment we receive from the customer shall be applied first of all towards the discharge of the debts owed to us by the customer in respect of which no reservation of ownership in the terms of Article 7.1 is in force.  
7.7 The customer will inform us regarding any additional local requirement applicable in the region where the products he bought from us are stored, so as to establish and exercise our retention of title. Further, the customer will cooperate to fill in, sign and file any additional forms, if necessary to establish and/or exercise our retention of title.

### **Article 8 – WARRANTY**

8.1 We only warrant to the customer that the products shall be free from defects in material and workmanship, under normal use and service for a period of time as stated on the product, or in the separate documentation which is delivered with every individual product. Any modification in our warranty will take effect forthwith.  
8.2 The customer shall not offer any manufacturer's warranty, nor make any representations regarding the products, in addition to or different from those contained in our warranty.  
8.3 We will, at our discretion, either replace any product we determine was not in accordance with the contract at the time of delivery or credit the customer with the value of the product. Defective products will be kept available for inspection by us until a credit note has been issued. At our request, the defective products shall be returned to us once per quarter. Any products returned to us shall become our property. The costs of transportation shall be borne by us, but only if we determine that our warranty is applicable, within the framework of the provisions, regulations and limitations of Article 8. In case no warranty can be exercised, the customer shall bear the costs of transportation. This amount will be deducted in the next invoice to the customer, if any, or by separate credit note.  
8.4 To the extent permitted under applicable law, the warranties set forth in Article 8.1 are exclusive and in lieu of any and all other warranties, conditions, undertakings or other terms express or implied (whether by statute, common law, collaterally or otherwise) with respect to the delivery of the products, the non-delivery of the products, and/or the delivery of inferior products, including but not limited to implied terms of satisfactory quality, correspondence with description and fitness for particular purpose, merchantability or absence of hidden defects.  
8.5 Warranty claims shall not be entertained, where:  
a) the customer has accepted the products delivered without reservation or protest,  
b) we have not been notified in writing by the customer about the (non-visible) inferiority of the products delivered within five (5) days after establishing this fact, unless we have agreed in writing with the customer to send us reports at regular predefined intervals; and/or  
c) the products have been used in a way which is not mentioned in the directions for using the products; and/or  
d) the products have been repaired or there has been an attempt to repair the

products by anyone other than one of our authorised representatives; and/or  
e) the damage or defect is the result of an extraneous cause or has been caused by the fact that the products are subject to obvious normal wear and tear; and/or  
f) the total price for any products has not been paid by due date for payment.

### **Article 9 – LIABILITY**

9.1 We shall not be liable for any damage, including, but not limited to costs and expenses, caused as a result of any default in the fulfilment of our obligation(s) towards the customer. The fulfilment of the obligations under warranty as described in article 8 shall apply as sole and full compensation. Any other claim for compensation, for any reason whatever, shall be excluded unless intent or gross negligence by our managerial (executive) subordinates is involved. In no event shall we be liable for any special, consequential, indirect or incidental damages, however caused, on any theory of liability whether or not it has been advised of the possibility of such damages, arising in any way out of the contract between us and the customer.  
9.2 The customer shall indemnify us and hold us harmless against claims of third parties with regard to damage resulting from goods and services supplied by us, where and insofar as damage is caused by any act or negligence of the customer, subordinates of the customer or of others whom the customer has used under the terms of contract(s) signed with a third party.  
9.3 No servant or agent of us (including independent subcontractors from time to time employed by us) will be under any liability to the customer for loss, damage or delay, while acting in the course of or in connection with its employment and/or agency. Without prejudice to the above every exemption, limitation, condition and liberty herein contained, and every right, exemption from liability, defence or immunity of whatever nature applicable to us or to which we are entitled hereunder, will also be available and will extend to protect every such servant or agent of us acting as foresaid.

### **Article 10 IP RIGHTS**

10.1 We reserve all rights with regard to our Intellectual Property Rights ('IP Rights'). IP Rights in this respect means: all patents, know-how, copyrights, trade names, domain names, slogans, labels affixed by us to the products, trademarks, service marks, neighbouring rights, logos, word marks and design marks that we use in connection with our business, products and services or that our relevant affiliated companies otherwise claim.  
10.2 The customer acknowledges that we and/or our affiliated companies are the sole owner of the IP Rights.  
10.3 The customer shall not do anything inconsistent with such ownership. In particular, but without limitation:  
a) the customer shall not attack the validity of any of the IP Rights; and  
b) the customer shall not use the IP Rights or any variation thereof, in connection with any products which have not been supplied by us to the customer; and  
c) the customer shall not be permitted to issue sublicenses or to allow unlicensed manufacture, promotion or sale of the products; and  
d) the customer shall not use, under whatever circumstance, any of the IP Rights as part of its statutory and/or trade business name and is not allowed to remove or to change any brand name or symbol of us on the products; and  
e) the customer shall neither register, nor have registered, any of the IP Rights or IP Rights that are similar to those of ours or which creates the danger of association for the end-user); and  
f) the customer shall not be permitted to alter or modify the products, the packaging and the instructions how to use the products; and  
g) the customer shall not remove, cover, change, or add to the labels affixed by us to the products; and  
10.4 Unless expressly otherwise agreed in writing, the customer is only permitted to sell the products exclusively under our current and future brand names and/or logo's and must use only our symbols such as codes and type descriptions.  
10.5 If the customer has instructed us to manufacture the products from drawings, models, samples or other indications provided to us by the customer, the customer guarantees that as a result of this manufacture or sale/delivery of these products no intellectual property rights or any other right of third parties is harmed. The customer shall indemnify us and hold us harmless against claims of third parties with regard to damage resulting from such infringement.

### **Article 11 – FORCE MAJEURE**

11.1 Neither party shall be held liable for any breach of any order which can be attributed to force majeure, such as (e.g.) labour disputes, the unavailability of transportation, products (e.g. raw or subsidiary materials) or services, governmental restrictions and/or actions, regulations issued by the EU authorities or to a war (whether declared or not), any such event being called "a Force Majeure Event".  
11.2 If either party is affected by a Force Majeure Event, it shall promptly notify the other party of the nature and extent of the circumstances in question.  
11.3 In the event of non-performance or delay attributable to any Force Majeure Event, the period for the performance of the applicable obligation under the specific order shall be extended for a period equal to the period of delay, with a maximum of two months. Where the obstacle lasts for more than two months, the other party shall be entitled to cancel the order in writing, if we - after written demand hereof from the customer - are unable to deliver within a reasonable time-limit hereafter.  
11.4 However, the customer is obliged to fulfil its payment obligations in time in respect of orders already completed by us. The party affected by the delay shall nevertheless use its best efforts- with no obligation to spend substantial sums



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which would not otherwise be required under the conditions of the specific order - to circumvent or overcome the cause of the delay.

### **Article 12 – SUSPENSION AND CANCELLATION**

12.1 Without limiting the provisions of Article 11, if the customer fails to fulfil any of its obligations under the confirmed order, or fails to do so within the agreed time, such failure shall constitute an event or default by the customer and we shall be entitled, without prior notice or judicial intervention being required for that purpose:

- to suspend further deliveries under the affected order(s) and/or any other order with the customer until payment has taken place, or
- to cancel the affected order(s) and/or any other order in whole or in part entirely without prejudice to any of our other rights and without liability to us for any compensation whatsoever.

12.2 Notwithstanding other provisions in these General Conditions regarding suspension, each party shall be entitled to suspend performance of its obligations under the relevant purchase order where it is clear from the circumstances that the other party will not be able to perform its obligations. The party suspending the performance of its contractual obligations shall forthwith notify the other party thereof in writing, giving reasons (by e-mail).

12.3 If the customer is declared bankrupt or files a petition for an official moratorium, is in liquidation, is wound up, if the appointment of a guardian over him has been applied for, and also if an administrator or receiver has been appointed over (part of) its property, all orders which have not been executed shall be cancelled by operation of law, unless we inform the customer upon a reasonable term of notice that we demand specific performance regarding one or more orders. In that case we shall be entitled, without further notice being required for that purpose:

- a) to suspend further deliveries or work under the order(s) concerned until payment has been sufficiently secured, and/or
- b) to suspend all our payment obligations to the customer (if any), entirely without prejudice to any of our other rights towards the customer.

12.4 No waiver by us in respect of strict compliance with all conditions mentioned in the order(s), any other contract between us and the customer or in these General Conditions shall constitute a waiver in respect of any subsequent failure of the customer to comply strictly with all conditions hereof.

### **Article 13 – APPLICABLE LAW**

13.1 These General Conditions are subject to Dutch law. The court in 's Hertogenbosch is the competent court.

13.2 The Convention on the International Sale of Goods (1980) is not applicable, just as other international substantive rules that are not mandatory.

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