

GENERAL TERMS AND CONDITIONS

Section 1 - General

1. These terms and conditions shall apply to any quotation, offer and agreement between Molenaar Optics v.o.f., hereafter named: "Seller", and a person or company who buys or agrees to buy goods or services from Seller, hereafter named: "Buyer", whereupon Seller has put these conditions in practice, provided parties did not diverge from these conditions in mutual consent and in writing.
2. These conditions also apply to any agreement with Seller, whereof for its execution Seller needs to involve third parties.
3. These general conditions have been written as well for Seller's employees and its management.
4. Any applicability of a Buyer's own purchasing- or other conditions is declined explicitly.
5. If at any time any clause in these general conditions becomes completely or partially invalid or deemed to be severed from the agreement, the validity and enforceability of the remaining provisions shall not be affected or impaired. Seller and Buyer will then mutually agree on provisions replacing the invalid provisions, thereby observing to the utmost the purpose and intent of the original provisions.
6. If the explanation of any of the provisions of these general conditions would be unclear, the explanation shall take place in accordance with the spirit of these provisions.
7. If a situation occurs between parties not provided for in these general conditions, this situation shall be judged in accordance with the spirit of these general conditions.
8. If Seller is not demanding strict compliance to these conditions at all times, this shall not imply that such provisions do not apply, or that Seller to any degree loses its right to demand strict compliance with the provisions of these conditions in other situations.

Section 2 - Offers and quotations

1. All offers and quotations from Seller are free of obligations, unless the quotation includes a period for acceptance. An offer or quotation expires whenever the product referred to in the offer or the quotation becomes unavailable in the meantime.
2. Seller can not be kept to its offers or quotations if Buyer can understand in fairness that the offers or quotations, or part thereof, include an apparent mistake or writing error.
3. All prices mentioned in an offer or quotation are excluding BTW/VAT and other governmental taxations, cost related to the agreement, among them travel- and accommodation-, shipping- and administration cost, unless specified otherwise. In each quotation an extra amount for order cost shall be specified.
4. If Buyer's acceptance (whether or not on minor issues) differs from the in the quotation recorded offer then Seller is not bound to it. The agreement shall not come into being according to this differing acceptance, unless Seller decides otherwise.
5. A compound quotation shall not obligate Seller to partially execute the order for a corresponding part of the specified price. Quotations or offers shall not automatically apply for future orders.

Section 3 - Contract duration; terms of delivery, execution and change of the agreement

1. Seller and Buyer are entering the agreement for indefinite time, unless deriving otherwise from the nature of the agreement or if parties explicitly and in writing agree otherwise.
2. For completion of certain activities or for delivery of particular goods a term has been agreed or stated, the term of this term shall never be a fatal term. Upon exceeding a term, Buyer shall declare therefore Seller in default by written notice. Herein, Buyer shall offer to Seller a reasonable term for yet executing the agreement.
3. If Seller requires information from Buyer for the execution of the agreement, the term for completion or delivery shall not begin earlier than after Buyer has put this information correctly and completely to Seller's disposal.
4. Delivery is made Ex Works (EXW), Free Carrier (FCA) or Delivered at Place (DAP) according to the Incoterms 2020, to be decided by Seller. Buyer shall accept delivery of the ordered goods at the moment Seller is making these available to him. If Buyer refuses receipt of goods or is negligent in providing information or instructions necessary for their delivery, Seller is entitled to stock up these goods at Buyer's expense and risk.
5. Seller is entitled to subcontract certain activities by third parties.
6. Seller is entitled to execute the agreement in several phases and/or to deliver this and/or to separately invoice the thus executed and/or partially delivered.
7. If executing and/or delivering the agreement in phases, Seller is entitled to postpone the execution of those parts that belong to a subsequent phase until Buyer has approved the results of the thereto preceding phase in writing.
8. Seller reserves the right to under- or over-deliver 10% of the quantity of goods acknowledged for delivery in case of mass production. This has no influence on the beforehand agreed price per piece.
9. If it appears during the execution of the agreement that, for correct execution thereof, it becomes necessary to change and/or improve this, parties shall adjust the agreement through timely and mutual consultation. Consequently, the originally agreed amount can be subject to increase or decrease. Seller shall provide a beforehand price specification, whenever possible. As effect of a change of the agreement, the originally agreed term for delivery may be subject to change as well. Buyer accepts the possibility of a change of the agreement, including the subsequent change of price and term of delivery.
10. In the event of a change of the agreement, thereto included an addition, Seller is entitled to await execution of this change until the authorized person in Seller's company has given his approval and until Buyer has agreed to the price and other conditions specified for the execution, thereto included the then to be determined point in time the execution will be started. If Seller does not execute or not immediately execute a changed agreement, no default situation for Seller shall arise, nor shall Buyer be entitled to cancel the agreement. Seller is entitled to refuse a request for a change of the agreement, without getting in default, if this qualitatively and/or quantitatively would affect for instance the consequently accomplished work or delivered goods.
11. If Buyer fails to correctly fulfill its obligations to Seller, Buyer shall be liable for all consequential damage (thereto cost included) resulted for Seller directly or indirectly.
12. If Seller has agreed with Buyer a fixed price, then Seller is nevertheless entitled at all times to increase this price without this entitling Buyer to cancel the agreement, if the price increase results from a jurisdiction or obligation under law or is caused by a price increase of raw materials, wages, etcetera or due to other causes in fairness unforeseeable when parties entered into the agreement.
13. If the price increase, other than resulting from a change of the agreement, exceeds 10% and occurs within three months after the entering into the agreement, then Buyer is exclusively entitled to appeal to Title 5 Section 3 of Book 6 BW (Dutch Civil Code) for terminating the agreement by written notice, unless Seller then yet consents to execute the agreement according to the originally agreed, or if the price increase arises from a jurisdiction or an obligation weighing on Seller in accordance with the law or if parties agreed that delivery will take place more than three months after the purchase.

Section 4 - Suspending, terminating and early terminating of the agreement

1. Seller is entitled to suspend execution of the obligations of or terminate the agreement, if:
 - Buyer is not, is not fully, or is not timely observing the obligations of the agreement;
 - After closing the agreement, Seller has received information about circumstances giving cause to concern that Buyer will not observe his obligations;
 - Seller has requested Buyer at the same time when closing the agreement to provide security for settlement of his obligations according to the agreement and this security fails to appear or is insufficient;
 - If due to delay caused by Buyer, Seller no longer can be obliged to observe the agreement according to the originally agreed conditions, Seller is entitled to terminate the agreement.

2. Further, Seller is entitled to terminate the agreement if circumstances arise of such nature that observance of the agreement is impossible or if otherwise circumstances occur of such nature that unchanged preserving of the agreement can not be demanded from Seller in fairness.
3. Termination of the agreement entitles Seller to immediately recover his claims from Buyer. If Seller postpones observance of the obligations, he preserves his claims by law and by the agreement.
4. If Seller decides to suspend or terminate the agreement, he shall never be bound whatsoever to any compensation of damage and cost thereby arising.
5. If Buyer is accountable for the termination, Seller is entitled to compensation for damage, including cost, thereby arising directly or indirectly.
6. If Buyer is not observing his obligations resulting from the agreement and this non-observance justifies termination, Seller is entitled to terminate the agreement immediately, taking effect at once, without any obligation on his part to paying any compensation or indemnification, while Buyer, by reason of default, does have the obligation to compensate or indemnify.
7. If Seller terminates the agreement early, Seller will ensure, in consultation with Buyer, to transfer unfinished work for the agreement to a third party. This, unless Buyer is accountable for the termination. If transfer of the work brings additional cost for Seller, these shall be invoiced to Buyer. Buyer shall settle this cost within the therefore indicated term, unless Seller requires otherwise.
8. In the case of liquidation, of (application for) suspension of payment or bankruptcy, of sequestration - if and as far as the sequestration has not been lifted within three months - at the expense of Buyer, of debt repayment or another circumstance depriving Buyer of the right to have free disposal of his equity capital, Seller is entitled to terminate the agreement immediately, taking effect at once, as well as cancel the order or agreement, without any obligation on his part to paying any compensation or indemnification. In this case, Seller's receivables and entitlements on Buyer are immediately claimable.
9. If Buyer cancels a placed order in full or partially, Seller will invoice therefore purchased or finished goods or services, increased with possible cost for supply, transport or delivery thereof and the labour time reserved for the execution of the agreement, integrally to Buyer.
10. Buyer can only return delivered items after written permission from Seller and provided that the returned does not reveal any traces of use, installation or damage otherwise. Buyer has entered into the obligation to pay in advance all cost for shipment and import duties for the returned (DAP according to the Incoterms 2020). Seller will credit Buyer for the returned after Seller has inspected this for traces of use, installation or damage otherwise. Seller will deduct all his cost related with the return from the credit. Seller does not accept returns of motorized products or products specially made for Buyer. Seller only accepts returns from Buyer of small, incidentally delivered quantities of standard products from catalogues distributed by Seller, provided Buyer returns them within 14 days after delivery and provided Buyer has paid the invoice for the related products in full. Seller is entitled to refuse goods returned by Buyer after expiration of this period, or to charge a restocking fee of 20% of the invoiced amount.

Section 5 - Force majeure

1. Seller can not be bound to observing any obligation to Buyer if he is therefore impeded by a circumstance that he can not be blamed for and can not be accounted for under the law, an act in law or according to commonly applicable interpretations.
2. Force majeure means in these general terms and conditions, besides anything according to the law and jurisprudence, all externally induced causes, foreseen or not foreseen, to which Seller could not have any influence, yet by which Seller was not able to observe his obligations. Work strikes at Seller's company or at a third party's thereto included. Seller is also entitled to appeal to force majeure if the circumstance that impedes (further) observance of the agreement occurs after Seller should have observed his obligation.
3. Seller is entitled during the period that the force majeure continues, to suspend the obligations from the agreement. If this period continues for a longer time than four months, each of the parties is entitled to cancel the agreement, without obligation to compensate damage to the other party.
4. As much as Seller has partially observed, or will be able to observe, his obligations from the agreement at the time of occurrence of the force majeure, and the observed or to be observed part has a separate value, Seller is entitled to separately invoice the observed or to be observed part. Buyer is bound to pay this invoice as if it was subject to a separate agreement accordingly.

Section 6 - Payment and cost of account collection

1. Payment shall occur within 30 days after the invoice date, using a method indicated by Seller in the invoiced currency, unless Seller has indicated differently in writing. Seller is entitled to invoice periodically. Seller reserves the right to deliver cash on delivery (COD) or require full or partial payment before shipment. Buyer shall pay all cost involved hereto.
2. If Buyer remains in arrears in the on time payment of an invoice, then Buyer is legally in default. Thus, Buyer is due interest of 4% per month, unless the legal interest percentage is higher, in which case the legal interest is due. The interest over the due amount shall be calculated from the moment Buyer is in default until the moment the full due amount has been paid.
3. Seller reserves the right to assign Buyer's payments first to decreasing the due amount of cost, thereafter to decreasing the outstanding amount of interest and at last to decreasing the principal amount and the current interest.
4. Seller can, without getting in default, refuse a payment offer, if Buyer points towards another sequence for assignment of the payment. Seller can refuse full payment of the principal amount, if not at the same time the outstanding- and current interest and cost of debt collection are paid.
5. Buyer is never entitled to settle what he is indebted to Seller.
6. Objections raised to the steepness of an invoice never suspend payment obligation. If Buyer cannot appeal to Section 6.5.3 (the Articles 231 until 247 of Book 6 BW, Dutch Civil Code) he is not entitled either to suspend payment of an invoice for any reason.
7. If Buyer is in default for the timely observance of his obligations, then all reasonable extrajudicial cost for receiving the payment will be for Buyer's account. The extrajudicial cost shall be calculated based on common Dutch accounts collection practice. If however Seller has made more cost for accounts collection, which were necessary in fairness, the actually made cost shall be subject to reimbursement. The eventually made judicial- and execution cost will be recovered from Buyer as well. Buyer is also bound to pay interest on the due cost for account collection.

Section 7 - Right of Ownership

1. The right of ownership and property of all goods and/or services delivered by Seller as part of the agreement shall remain vested with Seller until Buyer has correctly observed all his obligations from the agreement(s) closed with Seller.
2. Goods and/or services delivered by Seller falling under the right of ownership in accordance with paragraph "1.", shall not be resold nor used as tender at any time. Buyer is not authorized to pawn or encumber in whatever manner any goods falling under the right of ownership.
3. Buyer shall accomplish at all times anything that can be expected from him in fairness to guarantee Seller's rights of ownership.
4. In the event of sequestration or assertion of rights of delivered goods falling under Seller's right of ownership by a third party, it is Buyer's obligation to immediately inform Seller thereof.
5. Buyer commits himself to insuring and keeping insured delivered goods falling under Seller's right of ownership against damage by fire, explosion and water as well as against theft and shall offer the policy for inspection to Seller at his first request. Seller shall be entitled to any recovery payment from this insurance. For as much as necessary, Buyer commits himself to Seller in advance to assist with anything whatsoever that is or appears necessary or desirable as part of that.
6. Should Seller wish to exercise his right of ownership as specified in this section, Buyer gives to Seller and any third party to be appointed by Seller his unconditional and irrevocable permission

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in advance to enter those places where Seller's properties are located and to take back these goods.

Section 8 - Warranties, inspection and complaints, term of limitation

1. Goods delivered by Seller meet the common requirements and standards that can be expected in fairness at the moment of delivery and when being used in a manner considered normal use in The Netherlands. The warranty mentioned in this section applies to goods delivered in The Netherlands. For use outside The Netherlands, Buyer should verify himself whether the goods are suitable for use there and meet his local requirements. In this case, Seller can offer different warranty- and other conditions for the delivered goods or executed services.
2. The warranty as mentioned in paragraph "1." of this section applies for a period of 12 months after delivery, unless otherwise results from the nature of the delivered or parties have agreed different. If the warranty provided by Seller concerns goods produced by a third party, then the warranty is limited to the warranty provided by the producer, unless stated otherwise.
3. Any form of warranty expires if a defect is due to or resulting from injudicious or improper use thereof, from installation that makes it impossible to uninstall the item without damage, from injudicious or improper installation or electrical connection, from incorrect storage or maintenance thereto by Buyer and/or by a third party, if, without Seller's written permission, Buyer or a third party have made, or have tried to make changes to the item, have attached other items to it that should not be attached to it or if these were processed or treated in a manner different from the method prescribed by Seller. Buyer neither can have a claim for warranty if the defect is due to circumstances Seller cannot have any influence on, including weather conditions (such as for instance, but not only, extreme rainfall or temperatures) etcetera.
4. Buyer is bound to (let) inspect the delivered goods, immediately at the moment that the goods are being put at his disposal and/or the relevant work has been carried out. With that, Buyer shall inspect whether the quality and/or quantity of the delivered is in agreement with what has been agreed and meets the requirements parties have agreed as to that. Any visible defects must be reported to Seller in writing within seven days after delivery. Invisible defects must be reported immediately, yet anyhow within fourteen days ultimately, after discovery thereof, in writing to Seller. The report must contain a description of the defect as detailed as possible, to enable Seller effective reacting. Buyer shall provide the opportunity to Seller to (let) investigate a complaint.
5. If Buyer complains in time, this does not suspend his obligation to pay. In this case, Buyer remains bound to accept and pay for the remaining ordered goods and/or services.
6. If reporting a defect too late, Buyer has no right of repair, replacement or compensation anymore.
7. If it is certain that an item is defective and that with respect to that the complaint has been submitted in time, then Seller will either replace or take care for repair of or offer a reimbursement to Buyer for the defective item within a reasonable time after receipt of its return. Replacement is possible only after Buyer having returned the defective item to seller and after having provided the ownership to Seller, unless Seller decides otherwise.
8. If Seller finds that a complaint is unfounded, then Buyer will have to pay all cost arisen thereby, cost for inspection at Seller's side included.
9. After expiration of the warranty period, all cost for repair or replacement, including administration-, shipment- and callout charges, will be invoiced to Buyer.
10. As a deviation from the legal terms of limitation, the term of limitation for all claims and pleas against Seller and by Seller involved third parties for the execution of the agreement, is one year.

Section 9 - Liability

1. Should Seller be liable, then this liability is limited to that which is regulated in this section.
2. Seller is not liable for damage, of whatever nature, arisen because Seller has assumed incorrect or incomplete information provided to him by or on behalf of Buyer.
3. Should Seller be liable for any damage, then Seller's liability is limited to the value of the invoice for the order at the most, however only to that part of the order the liability refers to.

4. Seller's liability is in each case always limited to the amount of the recovery payment from his insurance company in an occurring case.
5. Seller is only liable for direct damage.
6. Direct damage only includes the reasonable cost for determining the cause and the extend of the damage, as far as the determining applies to damage in the sense of these conditions, any reasonable cost to making Seller's inadequate performance meet the agreement, for as much this can be accounted to Seller and reasonable cost, made to avoid or limit damage, for as much as Buyer proves that these cost did indeed limit direct damage as meant in these general terms and conditions.
7. Seller is never liable for indirect damage, among this included consequential damage, loss of profit, business revenue, anticipated savings and damage from stagnation of work.
8. The liability limitations mentioned in this section do not apply if the damage is caused by Seller's or Seller's managing subordinates' negligence.

Section 10 - Passing of risk

1. The risk of loss, damage or value decrease passes to Buyer at the moment items are being transferred to Buyer's control.

Section 11 - Protection

1. Buyer shall protect Seller for any claims from third parties, who suffer damage with reference to the execution of the agreement and whereof the cause is accountable to others than Seller.
2. Should Seller for this reason be approached by a third party, then Buyer shall support Seller both extra judicially and judicially and shall undertake immediately all that can be expected from him in this case. Should Buyer remain in default for undertaking adequate action, then Seller is entitled to thereto proceed himself, without proof of default. All cost and damage to Seller and third parties arisen thereby, shall come for the account and risk of Buyer.

Section 12 - Intellectual property

1. Seller reserves the rights and authority he is entitled for in accordance with intellectual property laws. Seller is entitled to use knowledge at his side enhanced from executing an agreement, for other purposes as well, as far as he is not bringing strictly confidential information from Buyer to the knowledge of third parties.

Section 13 - Applicable law and disputes

1. Dutch law shall apply to all judicial relations whereby Seller is acting as a party, also if an agreement is being executed in a foreign country in full or in part or if any party involved in the judicial relation has its domicile at that place. The application of the Vienna Convention is excluded.
2. The judge in Seller's domicile, administering in Utrecht, is exclusively competent to arbitrate in disputes, unless the law enforces differently. Nevertheless, Seller reserves the exclusive right to bring a dispute before the court in Buyer's domicile, either in The Netherlands or outside, and begin at that place a lawsuit or take possession of goods and take or have taken other provisional measures at those places and at those courts that appear necessary to Seller.
3. Parties shall only then appeal to the court after having made every effort to settle a dispute among themselves.

Section 14 - Location and change of conditions

1. These conditions have been registered at the Chamber of Commerce in Utrecht under number 30123889.
2. The last registered version or the version in place at the moment the agreement with Seller was entered shall always apply.
3. The Dutch text version of these General Terms and Conditions shall always prevail for the explanation thereof.