



GENERAL TERMS OF DELIVERY AND PAYMENT OF SMIT VISUAL B.V. IN GELDROP

These general terms are filed with the Chamber of Commerce in Eindhoven under number 17060336

1. GENERAL

1.1.

These general terms of delivery and payment, hereinafter to be referred to: "conditions", apply to all offers, quotations, accepted orders, assignments, arrangements and/or other agreements, as well as to all negotiations undertaken by the limited liability company Smit Visible B.V., hereinafter to be referred to as: "Smit", also when represented by an authorised party, with a third party, hereinafter to be referred to as: "customer".

1.2.

The applicability of conditions other than these conditions is excluded at all times, unless Smit has given explicit written permission. The applicability of such other conditions, following explicit and written permission from Smit, only concerns one-off other agreements.

1.3.

Smit retains the right to revise the text of these conditions at any time, due to changing circumstances. The revised text of the conditions will be brought to the attention of the customer in a fitting manner. Other deviations from these conditions can only be agreed by parties in writing.

1.4.

Once a customer has entered into an agreement with Smit on the basis of these conditions, any subsequent order made by the customer is automatically assumed to be in agreement with applicability of these conditions, regardless of whether such an order has been confirmed in writing.

1.5.

Should Smit not (immediately) exercise its rights pertaining to this agreement or these conditions, this does not deter from the right and opportunity to do so in the future, with motivation.

1.6.

Should any of the terms in the agreement or in these conditions, prove to be void or reversible, the agreement and these conditions will otherwise remain in force, and parties shall enter into consultation to decide on a replacement term, which is optimally compliant with the purpose and meaning of the void or reversed term.

2. OFFERS

2.1.

All quotations made by Smit, including any particulars and price calculations, made in any form whatsoever, are completely without obligation and are non-binding for Smit, unless explicitly agreed otherwise in writing. Without order confirmation by Smit, an order or assignment may never be assumed to have been accepted by Smit.

2.2.

Smit is by no means liable and has no obligation if the delivered product deviates in any manner from illustrations, drawings, sketches, whether shown in brochures or printed matter provided by Smit, or any deviation in colours, dimensions and weight specifications and other particulars.

2.3.

Smit holds the copyright to all printed matter and brochures by Smit, as well as all illustrations, drawings, sketches, etc. The customer is not permitted to reproduce or publicise such materials without explicit written permission by Smit.



2.4.
All brochures, illustrations, drawings, sketches, etc. must be returned immediately per registered post when first asked to do so by Smit, and all copies for personal use must be destroyed by the customer.

2.5.
Smit retains the right to make amendments to articles in its catalogue, brochures and other printed matter, as well as to remove any of these articles from the range of products.

3. DELIVERY

3.1.
The delivery and/or execution period quoted by Smit for any activities does not commence until Smit has confirmed the order in writing. The periods quoted are non-obligatory, though Smit will make every possible effort to realise the delivery or activities within the agreed period. In the unlikely event that a delivery or activities cannot be realised within the quoted period, Smit can never be held liable. Exceeding the agreed period will never entitle the customer to (partial) non-compliance with any obligations towards Smit, including explicitly understood payment obligations, nor will there be entitlement to any damages unless this is caused by intent or gross neglect on the part of Smit, this explicitly excludes any errors by non-authoritative personnel members of Smit.

3.2.
All Smit deliveries take place carriage paid and ex-works Smit, unless explicitly agreed otherwise in writing. From the moment of delivery given above, goods to be delivered are for the account and risk of the customer. Besides the price charged for the goods, the customer is also bound to pay any additional costs.

3.3.
The customer will be liable to pay handling costs and delivery costs to Smit for execution of orders up to an amount of € 200, excluding VAT. Smit will inform the customer at the time of reaching agreement on the order, at the latest, regarding the liability to pay handling costs and delivery costs.

3.4.
The customer hereby grants Smit permission to execute any agreements in instalments, and to invoice each instalment to the customer accordingly. Each instalment counts as a separate delivery under the terms of these conditions.

4. PRIVACY

4.1.
Smit's privacy policy applies to all offers, quotations, accepted orders, assignments, schemes and/or other agreements as well as to all negotiations, entered into by Smit, whether or not through the agency of an authorised party, with a buyer. This privacy policy can be found on the website www.smit-visual.com.

4.2
In the event that a buyer requests Smit to deliver products ordered from Smit directly to the address of a customer of the buyer, Smit will act as processor in the sense of the General Data Protection Regulation (GDPR) in so far as it receives from the buyer personal data regarding the buyer's customer. Smit will not share these data with third parties, unless this is essential to the execution of the agreement, for example because an external transporter needs to be engaged.

4.3
As the controller in the sense of the GDPR, the buyer determines the purpose and means of the processing of these (personal) data. Processing by Smit will take place exclusively within the scope of delivering products to the buyer's customer and the purposes reasonably regarded to be involved in this or purposes that may be determined in closer consultation.



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4.4

With reference to the processing in question, both the buyer and Smit will ensure compliance with the applicable legislation and regulations, which shall at any rate include the GDPR. The obligations arising from this will also be imposed on those who process the personal data under Smit's authority, including but not restricted to employees, in the broadest sense. The buyer warrants that the content, the use and the instruction(s) to process the personal data of its client(s) is/are not unlawful and does/do not infringe on any right of the customer(s) or of third parties.

4.5

Smit will process the personal data in the European Economic Area (E.E.A.) exclusively, unless processing outside the E.E.A. is essential due to the customer of the buyer being based outside the E.E.A. In these cases Smit may process the data outside the E.E.A. or have the data processed outside the E.E.A., but exclusively in those countries outside the E.E.A. in which the buyer's customer is based and those countries outside the E.E.A. in which processing is essential for transit.

4.6

In the event of a security breach and/or a data leak in the sense of the GDPR, Smit will inform the buyer of this without unreasonable delay. In the event that a customer of the client lodges a request for access to, rectification, erasure and/or limitation of the processing as intended in the GDPR with Smit, Smit will handle the request itself in so far as it is able to do this itself. Smit will inform the buyer of the request. Additionally, Smit will assist the buyer where possible in meeting its responsibility to the supervising authority and/or data subject as intended in the GDPR. In conclusion, Smit will provide the buyer with the assistance required for accountability as intended in the GDPR. Smit may charge the buyer a reasonable remuneration for all these activities.

4.7

All personal data Smit receives from a buyer regarding a customer of the buyer is covered by an obligation of confidentiality in respect of third parties, except in as far as external transporters need to be contracted or if there is a legal requirement to share the information with a third party.

4.8

Smit will not store the personal data of the customer of the buyer for longer than is essential to the execution of the agreement or in as far as this is essential for meeting a legal duty of retention.

5. LIABILITY AND COMPLAINTS

5.1.

Complaints concerning quality, fitting, type, amount and such of delivered goods will only be taken into consideration by Smit if and insofar as such complaints are submitted by the customer to Smit, by registered post and within eight days of receipt of the goods by the customer, with reporting of the time of delivery, type of product and further description of the complaint, whereby Smit must be given the opportunity to verify the grounds for complaint.

5.2.

Minor deviations in quality, dimensions, colours and such which are unavoidable from a technical point of view, or which are admissible according to the trade customs in the branch, may never form ground for a complaint.



5.3.

Complaints will not be taken into consideration if:

- the nature and/or composition of the delivered goods has been changed following delivery, by or relating to (lack of) action by the customer and by any third party acting on behalf of the customer;
- the goods are wholly or partially damaged;
- the goods demonstrate a defect caused by abnormal use, or as the result of intent, recklessness or non-compliance with maintenance instructions, or as the result of abnormal working conditions or inexperienced use.

If the complaint concerns a defect resulting from a drawing, sketch, design or specification provided by the customer, Smit is not obliged to take the complaint into consideration.

Smit is not obliged to take a complaint into consideration as long as the customer has failed to pay any invoice relating to delivered products. This also applies to invoices for products already delivered previously. Complaints do not relieve the customer from the agreed payment obligation(s) with due consideration of the agreements reached and made and/or terms of payment given in these conditions.

5.4.

Should the complaints proved to be justified, Smit has the option of replacing the goods in question for its own account, or carrying out repair work, or repaying the amount of the invoice paid, without any further obligation by Smit.

5.5.

Complaints with regard to sent invoices can only be taken into consideration if they are submitted to Smit per registered post within 14 days of the invoice date. If this period is not adhered to, the customer is bound to pay the invoice amount. Should the complaint prove to be justified, Smit shall amend the invoice amount. Once again, Smit is not obliged to take a complaint into consideration as long as the other party has not paid any invoice for goods delivered, and the complaint can never relieve the customer from the agreed payment obligation(s).

5.6.

If required by Smit, the customer is obliged to provide an opportunity for verification of the grounds for complaint by an expert to be appointed by Smit, and all rights to complaint become void if such grounds are found not to exist. The decision of said expert is binding for both parties. The costs of the expertise are for the account of the customer, should the complaint prove to be wholly or partially unfounded.

5.7.

The customer may not return delivered goods to Smit without prior consultation and without explicit written permission from Smit beforehand, such returned goods will not be accepted by Smit. Such goods returned incorrectly by the customer to Smit will be re-dispatched by Smit for the account of the customer/dispatcher.

5.8.

Smit is not responsible for errors made by the customer in orders, and also not for the customer being unable to sell articles delivered by Smit, to the customer's end users/clients. Such goods cannot be returned by the customer to Smit, unless the parties have explicitly reached other agreements in writing.

6. PRICES

6.1.

Unless explicitly otherwise stated, all prices are given in Euros and are exclusive of VAT. The prices also exclude transport costs, postage costs, packaging costs and handling costs, unless explicitly agreed otherwise in writing.

6.2.

If one or more of the determining cost price factors, such as purchase prices of goods, equipment or components, wage costs, taxes, foreign-exchange costs, social security or government expenses, insurance premiums and such, increase following provision of the quotation or after realisation of the agreement but prior to the delivery, Smit is entitled to adjust the sales prices accordingly. Smit will inform the customer of this price adjustment as quickly as possible.



6.3.
If the price increase amounts to more than 20% of the original price, the customer is entitled to terminate the agreement within seven days of the notification, by means of a written communication to Smit, unless this would be obviously unreasonable with a view to the circumstances of the case.

6.4.
Termination on the basis of this article does not give the customer any entitlement to compensation of any damage. In the case of termination as referred to in the previous sentence, Smit is entitled to compensation if the agreement has already been partially executed.

7. PAYMENT

7.1.
Payment must take place within 30 days of the invoice date, into the bank account of Smit, unless explicitly agreed otherwise in writing. Any costs of payment traffic related to the payment to be made by the customer are entirely for the account of the customer. The customer must ensure payment of the amount owing to Smit without any discounts or compensation, of any nature, unless explicitly agreed otherwise in writing.

7.2.
The customer is never authorised to claim right of deferment of the payment obligation towards Smit.

7.3.
Should the customer fail to pay the amount owing to Smit within the set period, the customer is considered to be legally in default without further communication, warning or notice of default being required from Smit. Should the customer fail to make payment within the set period, the customer is liable to pay Smit a contractual interest rate of 1% per month of the outstanding invoice amount, whereby a part month is considered to be a full month. Smit is exclusively free to assess whether the percentage payable on top of the invoice amount will actually be claimed.

7.4.
Smit is immediately authorised to contract out its claim for an unpaid invoice to a third-party debt collection agency. All judicial costs as well as all extra-judicial costs for collection of the Smit claim, are entirely for the account of the customer, which extra-judicial costs are set at a minimum of 15% of the amount payable, with a minimum of € 125.

Should the customer undertake legal proceedings towards Smit, and be ruled against by the applicable courts, all judicial costs incurred by Smit in the process will be payable by the customer.

7.5.
Smit is authorised to refuse orders from the customer and to cancel deliveries based on previous agreements, up to the time at which the customer has fully paid all amounts owed to Smit.

7.6.
Non-payment of an invoice amount on the due date will result in all outstanding amounts payable to Smit by the customer becoming immediately claimable, explicitly including those amounts which would not yet be payable at that time, without any communication, warning or notice of default being required from Smit.

7.7.
Before delivering goods, Smit is at all times authorised to require that the customer either arranges for prepayment of the agreed performance, or that the customer provides a form of surety accepted in standard banking traffic, such as an irrevocable bank surety for compliance of all amounts payable or to become payable by the customer to Smit on the basis of the agreement, or any other basis. If the customer does not comply with a request for a surety, or with any other obligation to which the customer is obliged by law, agreement or these conditions, the customer is considered to be legally in default without any form of notice of default being required.

7.8.
Smit will not provide discounts or commission, unless agreed with the customer in writing. The customer must ensure payment of the amount owing to Smit without having any grounds for credit, of any nature, unless explicitly agreed otherwise in writing.



8. RETENTION OF PROPERTY

8.1.

The property of the delivered goods passes to the customer as soon as all obligations towards Smit have been met, including payment of agreed performance / the purchase price for the delivered goods or goods yet to be delivered, including payment of the agreed performance for work to be conducted by Smit, and also including payment of claims due to shortcomings in the compliance with agreements, as referred to in article 3:92, paragraph 2 of the Dutch civil code.

8.2.

As long as the customer holds goods for which Smit may exercise retention of property, the customer is obliged to hand over such goods to Smit at the first request of Smit, without legal intervention being necessary. The customer is also obliged to store the goods in question separately and to mark them as being the property of Smit. The goods covered by retention of property by Smit may never be mortgaged or otherwise provided as surety towards third parties, including hire purchase and/or hire sale, nor may they be sold in any manner nor transferred or moved to any other location than agreed. The costs of exercising retention of property are for the account and risk of the customer.

8.3.

The customer is obliged to ensure that the goods covered by the retention of property of Smit, are insured against risks for which insurance is standard (explicitly including fire, theft, water and storm damage) or which is considered necessary by Smit. At Smit's first request, the customer shall provide insight into all documents concerning the above insurance.

8.4.

At Smit's first request, the customer shall provide additional guarantees in the form of several obligation, cash reserve or (reserved) (silent) pledge.

9. FORCE MAJEURE

In the event of force majeure, for whatever reason, and explicitly always including illness among the Smit personnel and contracted third parties, acts of war, (technical) working disruptions, financial devaluation, fire, war risk, strikes, lack of raw materials, government measures, blockades, import and export prohibitions, transport problems, material errors, non-timely or non-supply of the goods or raw materials to be provided to Smit by third parties, energy crises, seizure of stocks/inventory, Smit has the choice of either overrunning the delivery period or terminating the agreement with the customer, without Smit being liable for any form of compensation of damages. Smit must inform the customer as quickly as possible as soon as a force majeure situation occurs. Should the force majeure situation last longer than 3 months, either party is authorised to cancel the agreement by means of a written statement to that end, in which case Smit is not liable to pay any compensation for damages.

10. TERMINATION

In the case of non-timely purchase and/or non-compliance with the obligations by the customer, as well as in the case of the customer requesting suspension of payment, or being declared bankrupt on own request or at the request of a third party, or being admitted to the debt reorganisation scheme for natural entities, or if any form of seizure of movable objects and/or property or other goods takes place, as well as in the case of the customer suspending his company or threatening to suspend it, or approaching his creditors within the framework of a debt reorganisation scheme/settlement scheme, or if Smit may reasonably expect any of the situations named above to occur in the very near future, and informs the customer accordingly in writing, Smit is authorised to suspend any further delivery of goods or services to be executed, as well as to suspend any payments, and to wholly or partly terminate any agreements entered into with the customer, solely through written notification to the customer, without prejudice to Smit's rights, such as the right to full compensation for damages and/or redemption of goods.



11. LIABILITY

11.1.
Smit is not liable for payment of the direct and/or indirect damage suffered by the customer in the case of attributable non-compliance by Smit, with the exception of the situation in which there is intent or conscious recklessness by Smit itself in execution of the agreement. Indirect damage is also taken to mean: corporate damage, loss of profits, consequential damage (also to third parties) and other capital damage.

11.2.
This explicitly excludes liability for damage, in the broadest sense of the word, arising whether or not through intent or gross negligence of subordinates and third parties contracted by Smit for execution of assigned work.

11.3.
Smit will never accept liability for direct and/or indirect damage suffered and/or to be suffered by third parties, as a result of Smit's agreement with the customer. The customer must indemnify Smit against all possible claims by third parties regarding (alleged) damage, for any reason whatsoever, arising because of or in connection with the goods delivered and/or services performed, unless this damage is attributable to intent or conscious recklessness by Smit itself in execution of the agreement, not including action by Smit's non-managerial subordinates.

12. SAMPLES

The samples requested by the customer from Smit will be charged by Smit to the customer at the time of delivery. The costs of the samples will be fully credited by Smit if the samples are returned by the customer, unused, within 30 days of the delivery. Should the customer not meet these conditions, the amount charged to the customer, along with transport costs and value-added tax, will be directly payable.

13. INDUSTRIAL AND INTELLECTUAL PROPERTY

All rights of industrial or intellectual property with regard to computer programs, designs, methodologies, advice, models, drawings, printed matter, brochures, catalogues and such, derived from or used by Smit, are and remain the explicit and exclusive property of Smit, regardless of any efforts made by the customer or third parties contracted by the customer, including Smit's own personnel, in the production of such property. Exercising these rights – including publication, transfer, multiplication, distribution of information, in the broadest sense of these terms – is explicitly and exclusively limited to Smit both during and after execution of the assignment.

14. DISPUTES AND APPLICABLE LAW

14.1.
All agreements covered by these conditions and agreements derived thereof, are governed exclusively by the law of the Netherlands, which also applies in full for negotiations undertaken, quotations, arrangements, assignments and such.

14.2.
All disputes which may arise between Smit and its customers, concerning execution of agreements, arrangements, quotations, assignments and such covered by these conditions, will be exclusively settled by the court with competent jurisdiction in 's-Hertogenbosch, unless precluded by compelling rules of law.