General Conditions governing the Sale and Delivery of Products (to business customers)

July 2014

Beroepsorganisatie Nederlandse Ontwerpers

1. Applicability of these General Conditions

1.1. These conditions apply, to the exclusion of any other conditions, to all offers, agreements and deliveries regarding products created or offered by the Designer.

1.2. The following definitions are used in these General Conditions:

a. Designer the design agency that or the designer who sells products, not being a consumer; and

b. Buyer the Designer's counterparty, not being a consumer.

2. Offers and agreements

2.1. An offer or quotation will be without commitment, unless it relates to a Consumer Purchase, and will be valid during the specified term or while stocks last.

2.2. Agreements between the Designer and the Buyer will be concluded on written confirmation by the Designer, including confirmation by e-mail. An automatically generated electronic order confirmation will not serve as such confirmation. The Designer reserves the right to refuse an order.

2.3. The Designer will have the right to make use of third parties in the performance of the agreement. Any and all rights and claims stipulated in these Conditions and in any further agreements for the benefit of the Designer will equally apply to any agents and other third parties engaged by the Designer.

3. Change in circumstances and force majeure

3.1. If the prices of raw materials or wages, import duties, taxes or other external costs increase after the conclusion of the agreement (whether or not due to currency fluctuations), the Designer will have the right to adjust the purchase price to that increase.

3.2. The Designer must inform the Buyer of such a circumstance as soon as possible, after which the Buyer will have the right to dissolve the agreement within a period of eight (8) days, unless the increase is due to a statutory price increase.

3.3. If the Designer is unable to perform the agreement due to an event of force majeure, the Designer will have the right to dissolve all or part of the agreement or to suspend its obligations until the force majeure situation has ended. The Buyer is then obligated to pay for any products already delivered.

4. Delivery

4.1. Specified delivery and other terms are stated for information purposes only and will not be of the essence, unless otherwise expressly agreed in writing. If a term is exceeded, the Buyer must therefore give the Designer written notice of default.

4.2. If the Designer requires information from the Buyer for the performance of the agreement, or if full or partial payment in advance has been stipulated, the delivery term will not commence until the Designer has received the correct and full information or the payment in advance.

4.3. Orders will be delivered carriage paid only if that was expressly agreed. If delivery is not carriage paid, the Designer will have the right to charge freight costs.

4.4. Delivery will take place the moment the products leave the Designer's storage room. The risk in the products delivered will pass to the Buyer on delivery, regardless of the agreements made between the Designer and the Buyer regarding transport and insurance.

4.5. If the Buyer refuses to take delivery, the Designer may charge him the resulting costs. In that case the Designer will also have the right to dissolve the agreement, without prejudice to his right to claim full damages.

5. Retention of title

5.1. All products delivered will remain the Designer's property until the Buyer has fulfilled all his obligations towards the Designer under the agreement.

5.2. The Buyer may sell the products that have remained the Designer's property pursuant to this clause to third parties only in the context of the normal conduct of its business.

5.3. If the Buyer fails to fulfil its obligations under an agreement concluded with the Designer and the Designer has good reason to believe that the Buyer will fail to fulfil its obligations, the Designer will have the right to take back products delivered from the Buyer or from third parties that hold the products on behalf of the Buyer. In that case the Buyer must fully

cooperate.

6. Dissolution and return of products

6.1. The Buyer may amend or cancel an order only with the Designer's prior consent. If the Designer has already incurred costs or will incur costs as a result of the amendment or cancellation, the Designer may charge those cost to the Buyer.

6.2. Products delivered may be returned only with the Designer's prior written consent, whereby the Designer will have the right to give instructions regarding the manner of shipment. The direct costs involved in the return shipment of the products in the context of this Article will be payable by the Buyer, unless otherwise expressly agreed in writing. The Designer may wait before making the repayment until the Designer has received the return shipment.

7. Payment

7.1. The Designer may at any time demand full or partial payment in advance or cash on delivery.

7.2. If products are delivered on account, the invoice amount must be paid within fourteen (14) days, without the Buyer being entitled to any discount or setoff.

7.3. If the Designer has not received (full) payment at the end of the payment period, the Buyer will be in default and will owe interest equal to the statutory interest rate that applies to business transactions. All costs incurred by the Designer in connection with late payment, such as procedural costs and judicial and extrajudicial costs, including the costs of legal assistance, bailiffs and debt collection agencies, will be payable by the Buyer. The extrajudicial costs are set at a minimum of 10% of the invoice amount, subject to a minimum of € 150, excluding VAT.

8. Right of suspension and dissolution

8.1. In addition to the provisions regarding force majeure and the provisions of Article 6, the Designer will have the right to suspend (in full or in part) the performance of its obligations under all agreements that exist between the parties or to dissolve those agreements in full or in part without any notice of default or judicial intervention being required:

a. if the Buyer is in default or the Designer has good reason to believe that the Buyer will not perform its obligations in full and/or in time;
b. in the event of liquidation, a suspension of payment, a petition for a suspension of payment, bankruptcy or debt rescheduling, or any other circumstance as a result of which the Buyer can no longer freely dispose of its capital; or
c. if circumstances occur as a result of which it is impossible to perform the agreement or the Designer cannot reasonably be required to continue the agreement in an unamended form.

8.2. In the cases referred to in paragraph 8.1 any obligations of the Buyer will furthermore fall due immediately and the Designer will not be required to pay any damages.

9. Guarantees and complaints

9.1. The products to be supplied by the Designer will meet the customer requirements and standards that can reasonably be set at the moment of delivery and for which they are intended in the event of normal use. If applicable, guarantee provisions of suppliers and third parties, such as producers and importers, will apply to the products supplied by the Designer.

9.2. In the event of use outside the Netherlands, the Buyer itself must verify whether the products are suitable for use there and whether they meet the conditions and the applicable statutory and other requirements.

9.3. The Buyer will be required to inspect the products delivered immediately after receipt. Any defects established must be reported to the Designer in writing, stating the reasons, within ten (10) days or in the case of external defects immediately.

9.4. If it has been proven that a product is not in conformity with the agreement and the complaint was filed in a timely manner, the Designer may, at its option, replace the product in question, arrange for repairs, or refund the invoice price plus any shipping costs paid.

9.5. All data, designs and images regarding colours, materials, dimensions and finishing will be for information purposes only. Divergences will not be reason for rejection, discount, dissolution of the agreement or damages if such divergences are minor.

10. Intellectual property rights

10.1. The Buyer expressly acknowledges that all intellectual and/or industrial property rights in respect of the products, materials and information made available to the Buyer by the Designer, including samples, packaging, labels and designs (and their appearance), the composition and/or specifications of samples, products and semi-finished products, as well as technical and commercial know-how, models, moulds, designs and patterns, vest in the Designer, its supplier or other parties entitled.

10.2. If and insofar as the Designer manufactures products or packaging on the basis of express instructions given by the Buyer, such as specifications, designs, sketches, models or patterns provided by the Buyer, the Buyer warrants that no third-party rights will be infringed. The Buyer indemnifies the Designer against any third-party claims in this context and will reimburse all costs incurred by the Designer in connection with such claims.

11. Liability for damage

11.1. The Designer will not be liable for damage caused:
   a. by incompetent use of the products delivered or use for a purpose other than that for which they are suitable by objective standards;
   b. because the Designer used incorrect or incomplete data provided by or on behalf of the Buyer;
   c. third parties engaged in a performance of the agreement at the Buyer's request or with the Buyer's consent;
   d. materials or services provided by third parties at the Buyer's request or with the Buyer's consent; or
   e. misunderstandings, damage, delays or the improper receipt of orders and notifications due to the use of the Internet or any other means of communication (whether or not electronic).

11.2. Only direct loss attributable to the Designer will qualify for compensation. Any and all liability for indirect loss, including but not limited to consequential loss, loss of profits, damaged or lost data or materials, and loss of proceeds is excluded.

11.3. Insofar as the Designer is liable for the reimbursement of loss, that loss will be limited to the invoice amount for the delivery or partial delivery in question, on the understanding that that amount will not exceed € 45,000 and will in any event be limited to the amount that the insurer pays the Designer in the case in question.

11.4. The Buyer indemnifies the Designer against any and all claims from third parties that incur losses in connection with the performance of the agreement and for the cause of which the Buyer is to blame.

11.5. The limitations recorded in Article 11.1 to 11.14 will not apply if the loss is due to intent or gross negligence on the part of the Designer or its executive or non-executive subordinates.

12. Dutch law and competent court

12.1. This Agreement is governed by Dutch law, also if an obligation is performed abroad in full or in part or if the Buyer has its place of residence there. The applicability of the Vienna Sales Convention is excluded.

12.2. In the event of disputes, the court of the place where the Designer has its registered office will be the competent court, unless mandatory rules of law provide otherwise. The Designer will nevertheless have the right to submit the dispute to the court that has jurisdiction according to the law.

12.3. The parties will submit a dispute to the court only after they have made every effort to settle the dispute in consultation.

13. Other provisions

13.1. The Dutch text of these General Conditions will at all times be decisive in the interpretation of these General Conditions.

13.2. Amendments and/or additions to these General Conditions will be valid and applicable only if recorded in writing. If the Designer uses additional conditions or any provisions that conflict with these General Conditions, that will not affect the validity and applicability of other provisions of these General Conditions.

13.3. These General Terms and Conditions are a translation of the Verkoop- en leveringsvoorwaarden Producten t.b.v. zakelijke afnemers of the Association of Dutch Designers (BNO). In the event of any discrepancies between these two Terms and Conditions, the Dutch text will prevail.