

**GENERAL TERMS AND CONDITIONS  
OF SALE AND DELIVERY of  
Wigersma & Sikkema B.V.**



**Article 1 - Definitions**

In these general terms and conditions the following terms have the following meaning:

- a. Contractor: Wigersma & Sikkema B.V.
- b. Client: every natural person, legal entity or company with whom the Contractor enters into an agreement for the delivery of goods and/or the provision of services, or with whom the Contractor negotiates on the formation of an agreement.
- c. Offer: the offer and/or quotation submitted by the Contractor to the Client relating to the delivery of goods and/or the provision of services by the Contractor.
- d. Order: each Offer accepted by the Client (both orally and in writing).
- e. Order Confirmation: a written confirmation of the Order issued by the Contractor to the Client.
- f. Agreement: every Agreement formed between the Contractor and the Client relating to the delivery of the goods and/or the provision of services, any change or supplement to such as well as all (legal) acts in preparation and performance of such Agreement.
- g. Work: all work carried out or to be carried out by the Contractor for which an order has been given or which arise from, or directly relate to, the Order.  
The above applies in the widest sense of the word and includes in any event the work as stated in the Order or Order Confirmation.

**Article 2 – General**

- 2.1 These general terms and conditions apply to, and form part of, all requests made by the Client, to the Offers made by the Contractor, to Orders by the Client, to Order Confirmations from the Contractor and to all agreements to be entered and entered into by the Client with the Contractor in the context of the performance of the work for the benefit of the Order.
- 2.2 These general terms and conditions exclude general or specific conditions or stipulations on the part of the Client, unless expressly otherwise agreed in writing.
- 2.3 Departures from these general terms and conditions are only valid if and insofar as they have been expressly agreed by the Contractor in writing.
- 2.4 Should in the opinion of the competent court any provision of these general terms and conditions not be applicable or be in conflict with public order or law, only the relevant provision will be deemed as not having been written but these general terms and conditions shall for the rest remain in full force. Instead of any invalid provision, a provision shall apply which most closely approaches the parties' intention.

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- 2.5 If parts of the Agreement and the accompanying annex/annexes are in conflict with the general terms and conditions, the following ranking order applies: firstly the Agreement, secondly the annex/annexes and thirdly the general terms and conditions.

**Article 3 – Agreement and cancellation**

- 3.1 An Offer made by or on behalf of the Contractor is only addressed to the Client, may not be distributed and is entirely without obligation even if it contains a period for acceptance and can, even after acceptance by the Client, be withdrawn by the Contractor within fourteen days. The information included in such are by way of designation and indication only.
- 3.2 An Agreement is not formed until the Client has accepted the Offer or if the Order is confirmed in writing by the Contractor. Requests for further specifications or information from the Client is not deemed to be a start of the performance by the Contractor.
- 3.3 Amendments, supplements and/or expansions of the Agreement are only binding if these have been agreed between the parties in writing or if the Agreement is performed by the Contractor in accordance with the amendments, supplements and/or expansions.
- 3.4 All (legal) acts carried out and conduct by an officer or employee of the Client in the context of the formation, performance or amendment of the

Agreement between the Contractor and the Client are deemed to have been carried out on behalf of the Client in a duly authorised manner and will bind the Client. The Client cannot, towards the Contractor, rely on the fact that no authority is present in respect of these acts or conduct to represent or bind the Client legally.

- 3.5 The Client can only cancel the Order if the Contractor has agreed with this in writing.
- 3.6 On cancellation of the Order, the Client is obliged to pay the Contractor a payment on the basis of the following percentages:
- a) In the period up to 7 days before the agreed delivery date: 25% of the agreed sum;
  - b) In the period between 1 and 7 days before the agreed delivery date: 75% of the agreed sum;
  - c) On the delivery date: 100% of the agreed sum.

The minimum payment in connection with cancellation is € 50 per order, irrespective of the period in which the cancellation took place.

- 3.7 The Client indemnifies the Contractor against all claims of whatever nature which third parties may bring against the Contractor in respect of any loss suffered or to be suffered as a result of the cancellation of the Order by the Client.

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**Article 4 – Performance of the Agreement**

- 4.1 The Client ensures that all information, specifications, data and documents of which the Contractor indicates such are necessary or of which the Client reasonably should understand that they are required for the proper performance of the Agreement, are provided to the Contractor on time.
- 4.2 If the information required for the performance of the Agreement has not been provided to the Contractor on time, the Contractor is entitled to suspend the performance of the Agreement and to charge the extra costs resulting from the delay to the Client.
- 4.3 The Client guarantees the accuracy, completeness and reliability of the information and documents provided by or on behalf of the Client to the Contractor, even if such originate from third parties.
- 4.4 The Contractor determines the manner in which and by which person(s) the Agreement is performed.
- 4.5 The service provision by the Contractor qualifies as a best-efforts obligation.

**Article 5 – Performance by third parties**

- 5.1 The Contractor is entitled, insofar as this is required for a proper performance of the Agreement, to have the Order partly carried out by third parties without notification to, and express permission of, the Client. The Contractor is not liable for the shortcomings of these third

parties, except for an intentional act by or gross negligence of the Contractor.

- 5.2 The applicability of Sections 7:404, 7:407(2) and 7:409 of the Dutch Civil Code is expressly excluded.

**Article 6 – Service and maintenance**

- 6.1 The Contractor only carries out maintenance, service and installation work to the goods it has produced or delivered and which has been expressly agreed in writing.
- 6.2 The Client must indicate in a timely manner where the service engineer has to report to, who the contact person at the work place will be and where, in the relevant case, the report must be sent. If the Client is not present, the service form is unilaterally determined by the Contractor's service engineer.
- 6.3 The Client must provide access to the installation that requires service or maintenance.

**Article 7 - Prices**

- 7.1 The offered and agreed prices are in Euro and exclusive of VAT.
- 7.2 On delivery within the Netherlands (excluding the overseas territories), prices are based on DDP warehouse of the Client.
- 7.3 On delivery outside the Netherlands, the prices are based on delivery FCA Doesburg.

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- 7.4 If after the time of the Offer and/or during the term of the Agreement a change occurs in the price-determining factors, for whatever reason, the Contractor is at all times entitled to charge this rise on to the Client.

**Article 8 - Payment**

- 8.1 Unless otherwise agreed in writing, payment must be made within 30 days after the invoice date into a bank account to be indicated by the Contractor.
- 8.2 On exceeding the payment term, the Client is in default by operation of law (without any demand or notice of default being required therefore).
- 8.3 From the moment the Client is in default until the day payment is made full, the Client owes the Dutch statutory (commercial) interest plus default interest of 3%.
- 8.4 The payments made by the Client always first serve to pay all owing interest and costs and then the due and payable oldest outstanding invoices, even if the Client states that payment refers to a later invoice.
- 8.5 In the event of late payment all judicial and extra-judicial costs to collect all that is due are for the account of the Client. The extra-judicial costs are determined at minimum 15% of the unpaid part of the invoice amount (including VAT), without prejudice to the right of the Contractor to payment of the entire and actually incurred judicial and extra-judicial costs. Aforementioned costs are

payable from the moment the Contractor instructs the Client in writing to comply with its obligations. If the Contractor has started legal proceedings to collect its claim, the Client is obliged to pay the actual costs incurred associated with these proceedings.

**Article 9 – Guarantee**

- 9.1 The Contractor guarantees that the goods it has sold and delivered and the services it has provided correspond with all relevant statutory provisions and safety requirements.
- 9.2 With due observance of the provisions below, the Contractor guarantees for a period of maximum two (2) years the soundness and quality of the goods it has delivered and the services it has provided, provided that the guarantee never goes beyond the guarantees as issued by the manufacturer or the suppliers of the Contractor.
- 9.3 Minor deviations in quality, size and colour which are generally permitted in business practice and the normal wear and tear of goods or parts of such, cannot form ground for a claim on the basis of this article.
- 9.4 The Client only has a claim against the Contractor on the basis of this article if the Client is able to produce an invoice relating to the delivered goods or the services provided to the Contractor.

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- 9.5 The guarantees do not apply if the defect and/or the associated damage is due to a failure to comply with the applicable instructions and regulations for use, an external cause and/or improper use.

**Article 10 - Complaints**

- 10.1 On taking receipt of the goods and/or after realisation of the services provided, the Client must immediately check whether the goods and/or services provided are in accordance with the provisions in the Agreement.
- 10.2 A complaint in relation to observable defects (in quality or quantity) must, at the risk of forfeiting all rights, immediately on discovery but at the latest within one month after delivery of the goods or the carrying out of the work and/or the invoice amount, be submitted by registered letter stating reasons. Complaints relating to invisible defects must, at the risk of forfeiting all rights, be made immediately but at the latest fourteen (14) days after discovery, by registered letter stating reasons. Complaints relating to invoices must be notified to the Contractor in writing at the latest one week after the invoice date. If complaints are not submitted on time as stated above, the Contractor will not process these complaints and the Contractor rejects any liability in this respect.
- 10.3 If, at Contractor's sole discretion, the complaint is well-founded, the Contractor will replace or repair the relevant goods, such exclusively at the

Contractor's choice. In the event of a justified complaint lodged in respect of work carried out, the Contractor can adjust the invoiced remuneration, improve the rejected work free of charge or carry it out again, or terminate the Order wholly or in part on restitution of the remuneration already paid by the Client calculated on the basis of proportionality.

- 10.4 All rights and authorities available to the Client on the basis of defectiveness lapse if the Client has not complained within the periods stated in this article and/or has failed to give the Contractor the opportunity to remedy the defects.
- 10.5 Complaints as referred to in the first paragraph, do not suspend the payment obligation of the Client.

**Article 11 - Liability**

- 11.1 The Contractor is not liable for the loss suffered by the Client or third parties unless this loss is the direct result of an intentional act or wilful recklessness on the part of the Contractor.
- 11.2 Without prejudice to the provisions in the previous paragraph, it applies that the liability of the Contractor towards the Client is in all cases limited to the amount paid out under the liability insurance policies of the Contractor. If, for whatever reason, the insurer does not make a payment, the Contractor's liability is limited to maximum an amount of € 50,000.

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**Article 12 - Periods**

- 12.1 The delivery periods stated by the Contractor are never deemed to be strict deadlines.
- 12.2 The Client is not entitled to compensation for any loss, direct or indirect and of whatever nature, as a result of the Contractor exceeding the delivery periods agreed or stated, except in the event of an intentional act or gross negligence by the Contractor.

**Article 13 - Termination and suspension**

- 13.1 The Contractor is entitled, without prejudice to its right to compensation, to
- (a) suspend the performance of the Agreement and/or (b) terminate this Agreement wholly or in part, with immediate effect, without a notice of default or judicial intervention being required, if:
    - a. the Client fails to comply with any obligation pursuant to the Agreement or fails to comply with such on time or properly;
    - b. the bankruptcy or a moratorium of the Client has been petitioned/applied for, or, if the Client is a natural person, a debt restructuring has been requested;
    - c. the company of the Client is dissolved, liquidated or closed down;
    - d. executory attachment is levied on a substantial part of the assets of the Client;

- e. the Contractor has good reasons to fear that the Client is not, or will not be, able to comply with its obligations arising from the Agreement entered into with the Contractor.

- 13.2 The Client is not entitled to rely on any right of suspension or settlement towards the Contractor.

**Article 14 – Force majeure**

- 14.1 Force majeure on the side of the Contractor includes every circumstance outside the control of the Contractor as a result of which performance of its obligations towards the Client is reduced, wholly or in part, or as a result of which the performance of its obligations can reasonably not be required from the Contractor, irrespective whether or not such circumstance was foreseeable at the time the Agreement was entered into. These circumstances include, but are not limited to, extreme weather, failure by the suppliers to deliver and/or to deliver on time, sickness of third parties engaged by the Contractor, work strikes, emergencies at the Contractor, other business interruptions and measures taken by government bodies.



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14.2 If due to force majeure of a temporary (no longer than three months) or permanent nature, the Contractor is prevented from performing the Agreement (further), the Contractor is entitled, without being liable to pay any compensation, to terminate the Agreement without judicial intervention being required, or suspend the (further) performance of the Agreement.

14.3 If due to force majeure lasting a longer period than 3 months the agreed work cannot, or only partially, be carried out, this entitles the Client to terminate the Agreement. In such a case the Client cannot claim compensation.

**Article 15 - Retention of title**

- 15.1 The ownership of the goods delivered by the Contractor only transfers to the Client after the Client has complied in full with all that it owes to the Contractor pursuant to any Agreement or otherwise.
- 15.2 The Client is not entitled to sell, hire out or give in use, pledge or otherwise encumber the goods subject to retention of title.
- 15.3 If the Client fails to comply with any obligation towards the Contractor pursuant to the Agreement, the Contractor is entitled, without any notice of default being required, to repossess the goods falling under the retention of title. The Client already now gives the Contractor, or the third parties

to be appointed by the Contractor, its unconditional and irrevocable permission to enter all those places where the property of the Contractor will then be located.

**Article 16 - Intellectual property**

- 16.1 All intellectual property rights relating to the goods to be delivered and/or services to be provided, including installations and/or software and the information relating to such (such as manuals, drawings, images, photos, sketches, models or offers), shall both during and after the Agreement remain vested in the Contractor or in the third party from whom the Contractor has acquired the right to make the relevant goods available to the Client.
- 16.2 The Client may only use the software made available in and for the benefit of its own organisation in accordance with (any) (licence) conditions set to this end. The Client may not 'reverse-engineer' the software.
- 16.3 The Client only acquires a non-exclusive and (both in contractual and property law sense) non-transferable, revocable user right, exclusively for the duration of the Agreement, to the aforementioned intellectual property rights, solely for the purposes arising from the Agreement and on condition of full performance of by the Client of its obligations under the Agreement and these general terms and conditions. The Client cannot and may not give this user

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- right in (sub)licence (to third parties), unless otherwise agreed in writing.
- 16.4 The Contractor also reserves the right to use the increased knowledge it has acquired through the performance of the Agreement for other purposes if no confidential information is disclosed to third parties as a result.
- 16.5 The Contractor indemnifies the Client against claims in respect of goods delivered and/or provided by the Contractor on the basis of infringement(s) of intellectual property rights valid in the Netherlands, provided that the Client (a) shall notify the Contractor immediately of the existence and the content of the legal claim; and (b) leaves the handling of the case, including arriving at a settlement, entirely to the Contractor. The Client will provide its full cooperation to the required formalities and, if necessary, will permit the Contractor to put up a defence against these legal claims in the name of the Client. This obligation to indemnify lapses if the infringement relates to changes which the Client has made or has had third parties make to the goods, as well as in the event of the breach of these general terms and conditions by the Client.

**Article 17 – Applicable law and disputes**

- 17.1 This Agreement is governed by Dutch law.
- 17.2 The Vienna Sales Convention does not apply to the Agreement.
- 17.3 All disputes, of whatever nature, which may arise between the Client and Contractor and which cannot be solved by agreement, are exclusively heard by the competent court in Arnhem.

**Article 18 – Entry into effect**

These general terms and conditions have been filed with the Chamber of Commerce on 7<sup>th</sup> of March 2019. The Contractor is registered with the Chamber of Commerce under file number 09003148. These general terms and conditions can also be found on the website of Wigersma & Sikkema: <http://www.wigersma-sikkema.com>.