

## **Article 1 General**

1. These Terms and Conditions apply to every offer, quotation, and agreement between Ooms Producten, Ooms PMB and/or its affiliated subsidiary(ies), hereinafter referred to as: "Ooms", and the Other Party.
2. These Terms and Conditions shall also apply to agreements with Ooms for whose performance third parties must be involved.
3. The applicability of the Other Party's purchase conditions or other conditions, if any, is expressly denied.
4. If one or more provisions in these Terms and Conditions should be wholly or partly void or declared void at any time, the rest of the provisions in these Terms and Conditions shall remain in full force and effect. In such an event, Ooms and the Other Party will consult one another for the purpose of agreeing on new provisions to replace the void or voided provisions, and the new provisions shall approximate as closely as possible the purpose and essence of the original provisions.
5. Deviations from these Terms and Conditions are only valid if expressly approved in writing by Ooms.
6. In the event that Ooms does not require a strict observance of the Terms and Conditions this shall not mean that its provisions do not apply or that Ooms to any extent whatsoever loses its right to demand strict observance of the provisions of these Terms and Conditions in other cases.
7. 'In writing' for the purpose of these Terms and Conditions shall mean: by letter, by fax, or by e-mail.

## **Article 2 Offers and prices**

1. All Ooms' offers and quotations are subject to confirmation. Any offer or quotation shall lapse if the product to which the offer or quotation relates is no longer available.
2. Ooms shall not be bound by its offers or quotations if the Other Party can reasonably understand that the offers or quotations, or any part thereof, contain an obvious mistake or error in writing.
3. The prices mentioned in the offer or quotation are exclusive of VAT and import levies and other government levies, any costs to be incurred within the framework of the agreement, including travel and subsistence expenses, shipping costs and administrative costs, unless stated otherwise.
4. If Ooms and the Other Party have agreed on a price in any other currency than the euro, the conversion rate to the euro on the invoice date will apply.
5. Any change in one or more of the factors determining the cost price, such as purchase prices (whether or not changed with retroactive effect), exchange rates, import duties or turnover tax, or if the price increase results from an authority or obligation under any laws or regulations, will entitle Ooms, after order confirmation but before delivery, to choose either to charge an accordingly higher amount or to annul the order, and the Other Party will not be entitled to any compensation in this respect.
6. Any agreement shall not be binding on Ooms until it is confirmed in writing by Ooms. The agreement will always be concluded on the suspensive condition that from information obtained by Ooms it appears, at the discretion of Ooms, that the Other Party is

sufficiently creditworthy. If payment by a letter of credit is agreed on, the agreement will not become effective until the irrevocable (confirmed) letter of credit has been accepted in writing by Ooms.

7. A composite quotation shall not oblige Ooms to perform part of the contract for a corresponding part of the price quoted. Quotations or offers shall not apply automatically to future orders.
8. The documentation, samples and (technical) specifications provided by Ooms shall not be binding but are only intended to provide a general impression of the matter offered. Any deviations from information supplied in this manner shall not entitle to a right to claims or compensation.

## **Article 3 Contract period; delivery periods, performance and amendment of agreement**

1. If a period has been agreed or specified for the completion of certain activities or for the delivery of certain items, it shall never be a strict deadline. Therefore, if a period is exceeded, the Other Party shall give Ooms written notice of default. In such a case, Ooms shall be given a reasonable period so that it can still perform the agreement.
2. The delivery period starts on the date when the agreement is concluded in accordance with the provisions of Article 2.6 and Ooms has received any agreed advance payment from the purchaser. If Ooms needs information from the Other Party for the performance of the agreement, the performance period shall not start until the Other Party has made the full and correct information available to Ooms. In all events, the delivery period shall not start until Ooms has all documentation that is relevant for the delivery, at its disposal.
3. Solely if the agreed delivery period is substantially exceeded (more than 12 weeks), the Other Party shall be entitled to terminate the agreement unless the failure to meet the deadline is due to force majeure. However, the Other Party shall never be entitled to any penalty or compensation.
4. Ooms shall not be liable for loss or damage resulting from late delivery, if and to the extent that the late delivery is due to circumstances that are not at Ooms' risk and expense, including suppliers failing to perform (in time).
5. Non-compliance or late compliance with its payment obligations by the Other Party will suspend Ooms' obligation to deliver.
6. All deliveries shall be made pursuant to the Incoterms mentioned in the quotation (i.e. the version that is in effect on the conclusion date of the agreement). The Other Party is obliged to take delivery of the items at the time when these are put at its disposal. If the Other Party refuses to take delivery or is negligent in respect of providing information or instructions that are required for the delivery, Ooms shall have the right to store the items at the Other Party's expense and risk.
7. Ooms shall have the right to have third parties perform certain activities or deliveries.
8. If the delivery deviates less than 15% in respect of numbers, quantity and weights from what was agreed upon, the Other Party shall nonetheless accept the delivery. In such a case, the Other Party shall not be entitled to delivery or return of the

differences between the delivery and what was agreed upon.

9. Ooms reserves the right to deliver the items in partial deliveries.
10. If, during the performance of the agreement, it becomes clear that for a proper performance it needs to be adapted or supplemented, then the parties will effect adaptation through mutual and timely consultation. If the nature, scope or content of the agreement, whether or not at the request of the Other Party, the authorities, and so on, is changed and the agreement is thereby altered in quantitative and/or qualitative respect, this may also have consequences for what was originally agreed upon. This may cause the amount originally agreed upon to be increased or decreased. Ooms will submit a quotation for this, as much as possible in advance. Moreover, any alteration of the agreement may change the originally specified period for performance. The Other Party shall accept the amendment of the agreement, including the change of price and period for performance.
11. If the agreement is amended, including any supplement, Ooms shall be entitled to defer implementation until the authorised person within Ooms has given his approval and the Other Party has agreed to the price quoted for the performance and other conditions, including the moment for implementation to be determined then. Failure to perform, or to perform timely, the amended agreement shall constitute no breach by Ooms and shall be no valid reason for the Other Party to give notice of termination. Ooms may, without thereby being in default, decline a request for amendment of the agreement if this might have qualitative and/or quantitative consequences, for instance for the activities to be performed or the items to be delivered within that framework.
12. If the Other Party should default in the proper performance of its obligations towards Ooms, the Other Party shall be liable for all loss or damage (including costs) that his default causes directly or indirectly to Ooms.

#### **Article 4 Suspension, termination and premature termination of the agreement**

1. Ooms shall be entitled to suspend the performance of its obligations or to terminate the agreement if:
  - the Other Party fails to perform, or perform fully, or perform in a timely manner, its obligations under the agreement;
  - circumstances become known to Ooms, after concluding the agreement, constitute sufficient grounds for believing that the Other Party will not comply with its obligations;
  - the Other Party, when the agreement was concluded, was requested to provide security for the compliance with its obligations under the agreement and the security is not provided or is insufficient;
  - if on account of the Other Party's delay Ooms can no longer be expected to perform on the conditions originally agreed upon, Ooms shall be entitled to terminate the agreement.
2. In addition, Ooms shall be authorised to terminate the agreement if circumstances of such nature occur as will render performance of the agreement impossible or if otherwise circumstances occur of

such nature as will make it impossible to reasonably require from Ooms the unaltered maintenance of the agreement.

3. If the agreement is terminated, the amounts owed by the Other Party to Ooms shall be immediately due and payable. If Ooms suspends the performance of its obligations, it retains its claims under the law and the agreement.
4. If Ooms decides to suspend or terminate the agreement, it is in no manner whatsoever obliged to pay damages and costs resulting from it in any manner whatsoever.
5. If the Other Party is accountable for the termination, Ooms shall be entitled to compensation, including the costs resulting directly or indirectly therefrom.
6. In the event of liquidation, of (an application for) suspension of payment, of bankruptcy, of attachment – if and in so far as the attachment is not lifted within three months – against the Other Party, of debt rescheduling or any other circumstance making it impossible for the Other Party to dispose freely of its own assets, Ooms shall be at liberty to give notice of termination with immediate effect or to cancel the order or the agreement, and it shall not be obliged to pay any damages or compensation. In such a case, the amounts the Other Party owes to Ooms shall be immediately due and payable.
7. If the Other Party wholly or partly cancels an order, then the items ordered or prepared for that order, plus any related supply costs, removal costs, and delivery costs and the working hours reserved for the performance of the agreement will be entirely charged to the Other Party without prejudice to Ooms' right to compensation for loss of profit and other losses. The Other Party shall also pay cancellation charges in the event of cancellation. These amount to 25 % of the order amount.

#### **Article 5 Force majeure**

1. Ooms shall not be obliged to comply with any obligation towards the Other Party if it is impeded from doing so as a result of a circumstance for which it cannot be blamed and for which it is not accountable under the law, by a legal act or according to generally accepted standards.
2. Force Majeure for the purpose of these Terms and Conditions shall mean, in addition to what it is understood to be in statute and case law, all causes from outside, either anticipated or not anticipated, on which Ooms cannot exert any influence, but as a result of which Ooms is not able to comply with its obligations. Strikes in Ooms' business or third parties' businesses are included. Ooms shall also be entitled to invoke force majeure if the circumstance impeding (further) performance of the agreement occurs after Ooms should have complied with its obligation.
3. Ooms may suspend the obligations under the agreement during the period in which the force majeure continues. If this period exceeds two months, both parties will be entitled to terminate the agreement without the obligation to compensate the other party for loss.
4. To the extent that Ooms, at the time the force majeure occurs, has already partially complied with its obligations under the agreement or will be able to

comply with these, Ooms shall be entitled to invoice separately the part already performed or to be performed. The Other Party shall be obliged to pay this invoice as though it concerned a separate agreement.

#### **Article 6 Payment**

1. If delivery takes place on the basis of open account, payment must be made within 30 days of the invoice date, in a manner indicated by Ooms and in the currency used in the invoice, unless Ooms has stated otherwise in writing. Ooms shall be entitled to use summary invoices.
2. If the Other Party defaults in paying an invoice timely, then the Other Party shall be in default by operation of law. In such a case, the Other Party shall pay interest at 1% a month, unless the statutory interest rate is higher, in which case the statutory interest shall apply. The rent on the payable amount will be charged from the moment when the Other Party is in default until the entire amount owing is paid.
3. The Other Party shall never be entitled to any deduction, suspension, payment discount or setoff. All bank charges and payment charges shall be at the Other Party's expense unless the parties have agreed otherwise in writing.
4. If the Other Party defaults in the (timely) performance of its payment obligations, any expenses in respect of collecting this debt, both in and out of court, shall be borne by the Other Party. The extrajudicial collection costs will never be less than 15% of the amount to be collected. The Other Party shall also pay interest on the outstanding collection costs.

#### **Article 7 Retention of title**

1. Ooms retains title in all items delivered by Ooms within the framework of the agreement until the Other Party has duly complied with all its obligations under the agreement(s) it has concluded with Ooms.
2. Items delivered by Ooms that are subject to the retention of title pursuant to Article 1, shall not be resold and shall never be used as an instrument of payment. The Other Party is not authorised to pledge any of the items subject to the retention of title or to encumber the same in any manner whatsoever.
3. The Other Party shall always do all that he may reasonably be expected to do in order to safeguard Ooms' ownership rights.
4. If third parties attach the items delivered under retention of title or if they wish to establish a right or lay claim thereto, then the Other Party is obliged to inform Ooms immediately about this.
5. The Other Party undertakes to insure and keep insured the items delivered under retention of title against fire, explosion and water damage as well as against theft, and to make the insurance policy immediately on request available for inspection by Ooms. In the event of a payment by the insurance, Ooms shall be entitled to this payment. The Other Party, to the extent necessary, engages in advance to cooperate in all that may be, or turn out to be, necessary or desired in this context.
6. In the event that Ooms wishes to exercise its ownership rights referred to in this article, the Other

Party gives its unconditional and irrevocable consent in advance to Ooms and any third parties to be appointed by Ooms to enter all the locations containing property of Ooms and to repossess that property.

#### **Article 8 Warranties, inspection and complaints, time limit**

1. At the time of delivery, the items to be delivered by Ooms shall meet the specifications as mentioned in the quotation or the product datasheet. If the warranty given by Ooms concerns an item that is produced by a third party, the warranty shall be limited to that which the producer of the item gives for it, unless otherwise stated.
2. Any form of warranty will be annulled if a defect is a result of improper use or use after the expiry date, incorrect storage or maintenance by the Other Party and/or third parties when, without Ooms' written consent, the Other Party or third parties have made or tried to make changes to the item, other items were affixed to it that should not be affixed to it, or if these were processed or treated in a manner that is not according to the instructions. Nor can the Other Party lay claim to any warranty if the defect is the result of circumstances that Ooms cannot influence, including weather conditions (such as, but not limited to, extreme rainfall or temperatures) and so on.

The Other Party is obliged to inspect or order to inspect the item or service delivered immediately at the moment when it is put at its disposal or when the relevant activities have been performed. In the inspection, the Other Party shall verify if the quality and/or quantity of the item or service delivered is in accordance with what was agreed upon and meets the requirements that the parties have agreed upon in this respect. Any visible defects must be reported in writing to Ooms within three days of the delivery. Any non-visible defects must be reported in writing to Ooms immediately on discovery. The report must include a description of the defect with as much detail as is possible, so that Ooms will be able to respond adequately. The Other Party must give Ooms an opportunity to investigate a complaint or have it investigated.

3. If the Other Party complains in time, its payment obligation will not be suspended. In such a case, the Other Party continues to be obliged to take delivery of and to pay for the other ordered items.
4. If a defect is reported later, the Other Party will not be entitled to repair, replacement or crediting.
5. If it is certain that an item is defective and that a relevant complaint has been made in time, Ooms will, at its sole discretion, either replace or repair or credit the defective item within a reasonable period after receipt of the return shipment or, if return is reasonably not possible, written notice of the defect by the Other Party. Ooms shall in no event be obliged to compensate for costs and/or loss or damage. In the event of replacement, the Other Party is obliged to return the replaced item to Ooms and to transfer the title in it to Ooms, unless Ooms indicates otherwise.
6. If the complaint is proven to be unfounded, any costs resulting from it, including inspection costs

incurred by Ooms, shall entirely be borne by the Other Party.

7. After expiry of the warranty period, all costs for repair or replacement, including administration, shipping costs and call-out charges, will be charged to the Other Party.
8. Notwithstanding the statutory time limits, the time limit for all claims and defences in respect of Ooms and any third parties involved by Ooms for the performance of an agreement, shall be one year.

#### **Article 9 Liability**

1. Ooms shall only be liable for damage which can be attributed to its wilful misconduct or gross negligence.
2. Ooms shall not be liable for damage of any nature resulting from incorrect and/or incomplete information provided by or on behalf of the Other Party.
3. If Ooms is liable for any damage, its liability shall be limited to twice the invoice value of the order, or the portion of the order as the liability relates.
4. Ooms shall only be liable for direct damage.
5. Direct damage exclusively means the reasonable costs of determining the cause and the extent of the damage, insofar as the determination relates to damage in the sense of these provisions, and reasonable costs incurred to prevent or limit damage, insofar as the Other Party demonstrates that these costs have led to the limitation of direct damage as referred to in these Terms and Conditions. Ooms will never be liable for indirect damage, including consequential damage, lost profits, lost savings and business interruption losses.
6. Subject to abovementioned restrictions, the liability of Ooms is limited to the amounts paid out under its liability insurance.

#### **Article 10 Indemnity**

1. The Other Party shall indemnify Ooms against any claims by third parties who suffer loss or damage in relation to the performance of the agreement and whose cause is attributable to other parties than Ooms.
2. In the event that Ooms is held responsible in that respect by third parties, the Other Party shall support Ooms in and out of court and immediately do all that he may be expected to do in such a case. In the event that the Other Party fails to take adequate measures, Ooms will be entitled to take such measures itself without notice of default. All costs and loss or damage on the part of Ooms and third parties resulting therefrom, shall be entirely at the Other Party's expense and risk.

#### **Article 11 Intellectual property**

1. Ooms reserves the rights and authorities it is entitled to pursuant to the Copyright Act and other intellectual property laws and regulations. Ooms shall have the right to use any increased knowledge on his part as a result of the performance of the agreement for other purposes as well.
2. The Other Party is not be allowed to change delivered products wholly or partly or to provide the same with a different brand name, or to use the brand concerned in a different way or to register it in its own name.

#### **Article 12 Applicable law and dispute settlement rules**

1. The legal relationship between Ooms and the Other Party is exclusively governed by Dutch law, Any applicability of the Vienna Sales Convention (CISG) is excluded.
2. Any dispute that arises as a result of this agreement, or any ensuing agreement between Ooms and the Other Party shall be resolved exclusively by the component Court in Alkmaar, the Netherlands.
3. Ooms retains the right to submit all disputes arising out of or in connection with the present agreement to the International court of Arbitration of the International Chamber of Commerce, where it shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The seat, or legal place, of arbitration shall be Amsterdam, the Netherlands. The language of arbitration shall be English. The governing law of the contract shall be the substantive law of the Netherlands.
4. The parties will not seek a decision by a court or by arbitration until they have made every effort to settle a dispute in joint consultation.

#### **Article 13 Source and guiding version**

1. These Terms and Conditions are filed with the Chamber of Commerce, the Netherlands.
2. In the event of any difference between the English text and the Dutch text of Ooms' Terms and Conditions, the Dutch text shall prevail.