

# General Sales and Supply Conditions Codema Systems Group, version July 2020

## Article 1. Terms

1.1.	The following terms have the following definitions in the current general conditions.	
	General conditions	The current general sales and supply conditions.
	Article	An article included in the General conditions.
	CC	Dutch Civil Code.
	Service	Activities performed by User for, or at least on behalf of, Client.
	User	The party declaring the General conditions to apply.
	Codema company	Any legal entity of which Codema Systems Group B.V. (Dutch Chamber of Commerce number 27243840) directly or indirectly holds 50% (or more) of the issued shares and/or is authorized to appoint and fire the board in question and/or of which it is the board directly or indirectly, as well as any cooperation without legal personality of which Codema Systems Group B.V. or one of its subsidiaries is part as general partner or a similar capacity.
	License agreement	An Agreement that partially or fully concerns the provision of User to Client of a non-exclusive right to install and use the agreed upon quantity of software (modules and/or custom applications) on a system, including but not limited to programmes, modules, updates, PLC checks and/or custom solutions.
	Client	The party that entered into or will possibly enter into an Agreement with User.
	Agreement	An Agreement concluded between User and Client.
	Parties	User and Client.
	Product	Products to be delivered or delivered by User to Client, including systems, such as cultivation systems, water purification systems etc.
	In writing	On paper or by e-mail.
	Software	Any software made available or provided by User to Client to which User holds the rights or of which User is otherwise authorized to provide, as well as software provided by User to Client of which a third party holds the rights or of which the third party is otherwise authorized to provide.
1.2	Words expressed singularly also include the referred in plural and vice versa.	

## Article 2. Applicability General conditions

- 2.1. The General conditions apply to and are part of (i) all legal and actual actions (including correspondence, such as the notice of the issuance of a quotation and the contents of the quotation in question) of User and Client that may affect existing or future legal relationships between User and Client, (ii) all Agreements and (iii) all other legal relationships between User and Client.
- 2.2. Client shall also observe the General conditions pursuant Article 2.1 towards Codema companies other than User as if they were User.
- 2.3. The applicability of any general conditions referred to by Client are explicitly rejected by User.
- 2.4. In the event that one or more provisions from the General conditions appear null and void or are annulled, this shall not affect the legal effect of the remaining provisions. Instead of the nullification, the part of the agreement closest to the objective and spirit of the annulled provision will apply.
- 2.5. Provisions in the General conditions can only be deviated from if and insofar Parties agree on this in writing.
- 2.6. If and insofar a provision included in the Agreement deviates from a provision in the General conditions, the concerned provision included in the Agreement prevails.

- 2.7. In the event that there are differences between the original General conditions and a version in a different language, the provisions of the General conditions in the Dutch language prevail.

### **Article 3. Offer, acceptance, Agreement**

- 3.1 Any offer by User is fully noncommittal and revocable.
- 3.2 Acceptance of an offer made by User to Client should occur in writing by Client.
- 3.3 Any offer of User shall expire by law after 14 days have passed from the date of the offer if the offer is not accepted by Client in writing within this period.
- 3.4 User is entitled to revoke its offer for five working days after receipt of acceptance by Client.
- 3.5 If and insofar the acceptance of Client deviates from the offer of User, the deviations in question are only valid if and insofar User agrees to said deviations specified and in writing.
- 3.6 Offers of User and Agreements are based on the application of laws and legislation applicable in the Netherlands, as well as on the performance of the Agreement by User under normal conditions and during normal working hours.
- 3.7 An Agreement is concluded upon receipt by User of a timely acceptance by Client of an offer made by User to Client, or after shipment of User of its written order confirmation to Client.
- 3.8 Any extra activities delivered and/or performed and/or applied by User than what is explicitly and specifically documented in the Agreement is additional work. Client shall pay for additional work in addition to what it is payable to User based on the Agreement, regardless of whether the additional work is documented in writing and regardless of whether the additional work was foreseeable. User shall reasonably determine the amount payable by Client for the additional work. Reduction in work does not result in a decrease of the agreed upon price unless agreed upon otherwise in writing.
- 3.9 Oral commitments by and agreements with representatives of User only bind User if and insofar User confirms these in writing.
- 3.10 In the event that Client does not enter into a maintenance agreement with User simultaneously with an Agreement, User is not obligated to enter into a maintenance agreement with Client at a later point in time.

### **Article 4. Price**

- 4.1. The prices expressed by User are expressed in EURO, excluding any turnover tax and other levied taxes and government taxes, and are based on delivery 'Ex Works' (EXW) in accordance with the Incoterms applicable at the moment of the concluding of the Agreement in question.
- 4.2. In the event that, after User has made an offer or after concluding an Agreement, one or more of the proposed or agreed upon price determining factors (such as commodity prices) increase, User is entitled to increase the proposed or agreed upon price accordingly, regardless of whether this increase was foreseeable.
- 4.3. User is entitled to charge the costs for drawing up a quotation, drawings, calculations, descriptions, models or tools etc. (separately) to Client. If User is to draw up new drawings, calculations, descriptions, models or tools etc. in the event of backorders, incurred costs shall be charged to Client.
- 4.4. In the absence of agreements stating otherwise, packaging shall not be included in the price and shall be charged separately. Packaging shall be repossessed unless and insofar this cannot be expected of User.
- 4.5. Costs of loading and unloading and transport of the commodities, semi-manufactured goods, models, tools and other matters made available by Client shall not be included in the price and shall be charged separately.
- 4.6. Spare and consumable parts shall not be included in the price. Client is recommended to stockpile spare and consumable parts, of which User can provide a list upon request.

### **Article 5. Information, Intellectual Property rights and such**

- 5.1. Information provided by User to Client, such as images, drawings, models, diagrams in a quotation and/or catalogues used by User and provided to Client, are provided purely for illustrative purposes. Presented specifications, information and features of the to be delivered products are only binding if and insofar these are explicitly defined in the Agreement.
- 5.2. Any information produced by User which may or may not be provided to Client, such as drawings, calculations, supporting software, Software, descriptions, models, manufacturing and production methods, applications etc. and all related (intellectual and/or industrial property) rights remain property of or remain

- with User. Agreement or an offer for an agreement shall not result in any full or partial transfer of title, intellectual and/or property rights or any other rights of User to Client.
- 5.3. Without prior permission from User, Client is not authorized to copy or otherwise multiply, show to third parties or otherwise make public, in the widest sense of the word, any information, drawings, calculations, supporting software, descriptions, models, fabrication and production methods, applications etc. produced or provided by User.
  - 5.4. User is entitled to take and maintain technical or software measures to protect all that is produced and/or provided by it.
  - 5.5. Client is held to return without delay upon first request of User the concerned information, drawings, calculations, supporting software, descriptions, models fabrication and production methods, applications etc. to User, as well as destroying any copies and digital files.
  - 5.6. For each violation by Client of the provisions of Article 5, Client is payable to User an immediately claimable fine of EUR 15,000.00. The fine(s) in question shall not prejudice any right of User to compensation.

## **Article 6. License conditions**

### **6.1. Right of use, scope of the right of use**

- 6.1.1. In the event of a License agreement, User gives Client a non-exclusive right to install and use the agreed upon copies of (the agreed upon version of) Software (modules and/or custom software) on one system. The use of right for one copy of the Software extends to the documentation related to the Software.
- 6.1.2. The right of use will go in effect after User has received the License agreement signed by Client and Client has fulfilled its (payment) obligations resulting from the License agreement.
- 6.1.3. Client may only use the Software on the configuration on which the Software was installed by or on behalf of User or, with permission of the User, on an actual configuration that is supported by User according to the most current manual.
- 6.1.4. The right of use also includes standard modifications to the Software as well as new versions, releases and maintenance releases of the Software that are made available to the Client pursuant the license agreement or a maintenance agreement concluded with User.
- 6.1.5. In the event that newer versions of Software offer additional functionalities with regards to the agreed upon version of Software, User is entitled to demand additional payment for the right of use of these functionalities.

### **6.2. Method of use**

- 6.2.1. Unless Client and User have agreed that User is responsible for the installation and configuration of the Software on its system, Client is responsible for said matters itself.
- 6.2.2. Client is obligated to use the Software correctly. Client is not permitted to modify the Software, except in cases indicated by Software or User, which includes adding files or changing files used by Software.
- 6.2.3. Client shall correctly and timely install new Maintenance Releases, Releases, Versions and such provided by User to Client or shall have these installed.
- 6.2.4. Client shall always provide User with all information required for the performance of the Agreement in a timely manner.
- 6.2.5. If Software does not work correctly, Client shall immediately report this to User in detail.
- 6.2.6. Client shall create a backup at least once a week of the datafiles, other than the Software, that may be deemed as input or output of the Software in whichever manner. Client should also create such a backup in all cases indicated by Software and in all cases in which it should be reasonably clear to Client that this may be necessary for the proper and safe functioning of Software. If Client does not fulfil its aforementioned obligations (on time), User shall not be liable to Client for loss, destruction and modification and otherwise rendering unusable of data and related suffered or to be suffered loss by Client, without prejudice to other exclusion and limitation of liability of User pursuant the General conditions or otherwise applicable exclusions and limitations.
- 6.2.7. Without explicit prior written permission of User, Client is not permitted to copy, reproduce, decompile, duplicate or reconstruct any Software made available by User or any part of it, including documentation recorded in whichever manner.
- 6.2.8. Client shall prevent that its employees or third parties use or take possession of, misuse, damage, steal, destroy or copy the Software without authorisation. If such a situation occurs, Client should give immediate

and full notice of this to User.

### 6.3. Transferability

- 6.3.1. Without prior written permission of User, the right of use is not transferrable and cannot be sublicensed. Client is not permitted to rent out, lease, sublicense, sell, alienate, pledge or relinquish the Software under any title (for free or otherwise) to third parties for whichever purpose, or to let third parties use it or to create any other right with regard to the Software.
- 6.3.2. If, in violation of the provided in the preceding paragraph, Client provides unauthorized use of the Software to a third party, Client is jointly severally liable with this third party for the payment of the license compensation and the maintenance fees of the Software in question from the license registration date of Client on, without prejudice to the right of User to claim from Client for full suffered losses as a result of the violation of the preceding paragraph.

### 6.4. Intellectual property rights

- 6.4.1. The copyright, patent, tradename, logo and any other rights of intellectual or industrial property as well as similar rights for the protection of information with regards to the Software (including standard modifications and new versions), database, documentation or materials, all in the widest sense of the word, belong exclusively to User or its licensor. Nothing in the License agreement entails full or partial transfer of such rights.
- 6.4.2. Client is not permitted to change, remove or make unrecognizable any indication of intellectual or industrial property right. Client is not permitted to fully or partially reverse engineer the source code, barring those cases in which the law explicitly allows for this.
- 6.4.3. User is permitted to take technical measures to protect the intellectual property rights on the Software and/or materials.

### 6.5. Warranty on Software

- 6.5.1. User guarantees for six months from the date of delivery that the Software delivered by it in accordance with the written specifications provided by it shall function.
- 6.5.2. Repair of damaged or lost data does not fall under the warranty. The warranty does not apply if the Software was modified by other parties than User without Users prior written permission and/or as result of inexpert or unauthorized use of the Software. User may charge the costs in the event of operating errors and/or other causes that cannot be attributed to User.
- 6.5.3. The Software can only be said to not function properly if and insofar any errors are reproducible, in the absence of which the Software is deemed to function properly.
- 6.5.4. The procedure for the remaining cases is described in article 13 of these General conditions.

### 6.6. Confidentiality

- 6.6.1. Client commits to treating the contents (including but not limited to the code) of the provided Software as strictly confidential at all times. Furthermore, Client shall also obligate its employees and other persons engaged by it to this duty of confidentiality.

### 6.7. Termination

- 6.7.1. At the moment of termination of the License agreement, Client will immediately cease any use of the Software, including any copy, documentation and/or other materials provided by User and return these matters to user.

### 6.8. Fine

- 6.8.1. For any violation by Client of the provisions of Article 6.1 through 6.4, 6.6 and 6.7, Client is payable to User an immediately payable fine of EUR 15,000.00. The fine(s) in question do not affect any right of User for compensation.

## **Article 7. Delivery time**

- 7.1. An agreed upon period for delivery starts at the latest of the following times:
  - a. the first working day after concluding the Agreement;
  - b. the first working day after User has received the documents, information, licenses and such required for

- the performance of the Agreement;
  - c. the first working day after the formalities necessary for the performance of the Agreement have been performed;
  - d. the first working day after User has received the agreed upon advance payment from Client;
  - e. the day on which activities by User commenced.
- 7.2. An agreed upon period for delivery or specific moment of delivery always concerns an obligation of effort of User, no guarantee and/or final deadline. The delivery of additional work is not included in the agreed upon period for delivery or the specific moment of delivery unless agreed upon otherwise by User and Client.
  - 7.3. An agreed upon period for delivery or specific moment of delivery is based on the working conditions applicable at the time of concluding the Agreement as well as the timely delivery of the materials and/or services ordered by User for the performance of the Agreement. In the event of a delay due to changes in the working conditions or because the materials and/or services ordered for the performance of the activities, with the exception of gross fault, intent or deliberate recklessness of the company management employees of User, the agreed upon period for delivery is extended with the duration of that delay. The agreed upon period for delivery (or the specific moment of delivery) is also extended (or rescheduled) with the duration of any period in which Client did not fulfil any of its obligations arising from the Agreement, or fulfil reasonable cooperation by Client with regards to the performance of the Agreement. In the event that an extended delivery time or rescheduled moment of delivery cannot be fit into the schedule of User, then it will be scheduled for the first opportunity offered by its schedule. Insofar extension or rescheduling is attributable to Client, all extra costs incurred due to the changes will be charged to Client as immediately payable.
  - 7.4. A Product is deemed delivered once User informs Client that the Product is ready for shipment or, if a check or test at the company of User was agreed upon, that the Product is ready for its check or test.
  - 7.5. If User exceeds the delivery time, this does not entitle Client to fully or partially perform the obligations delegated to User in the Agreement or have these performed by a third party.
  - 7.6. If an agreed upon period for delivery, despite the provisions of Article 7.2, is considered a final deadline, then the compensation payable by User to Client due to exceeding that deadline, without prejudice the other limitations of liability of User based on the General conditions or otherwise, amounts to a maximum of 2.5% of the order sum, provided that a maximum of 0.25% of the order sum can be payable per fully elapsed week. No compensation is owed if the exceeding of the delivery time is the result of force majeure or if there is no otherwise attributable shortcoming of User in fulfilling its obligations.

#### **Article 8. Assembly/installation**

- 8.1. Client is liable towards User for the correct and timely performance of all installations, facilities and/or conditions required for the manufacturing, installation, commissioning and setting up of the to be assembled/installed Product or Software and/or its correct functioning in assembled/installed state.
- 8.2. In compliance with Article 8.1, Client guarantees in any case at its own expense and risk that:
  - a. the personnel of User, once this has arrived at the assembly location, may commence its activities and may continue its activities during normal working hours and, in addition, if User deems necessary, outside of normal working hours.;
  - b. pursuant government regulations, Agreement, and/or for the use of Product or Software, required facilities (including but not limited to utilities and continuous internet access) are present for User;
  - c. the accessways to the setup location and storage are suited for the required transport;
  - d. the designated location of housing, setup and storage is suited for storage and assembly;
  - e. the required lockable storage locations for materials, tools and other matters are present;
  - f. the required and customary auxiliary workers and tools, auxiliary and operating materials (including fuels, oils and greases, polish and other small material, gas, water, electricity, steam, pressurised air, heating, lighting etc., all in accordance with standard Dutch norms), and the standard measuring and testing equipment of the company of Client are made available to User on time and free of charge;
  - g. all required safety and precautionary measures have been taken and are maintained, as well as that all measures have been taken and are maintained in order to meet the applicable government regulations with regards to the assembly/installation;
  - h. upon receipt of and during the assembly/installation of the Product or Software, the materials to be provided by Client are present at the correct location.

- 8.3. Damages and costs that have arisen for User due to Client not or not timely fulfilling the conditions described in this Article are at the expense of Client. User may charge the costs and compensation of suffered losses to Client interim.
- 8.4. With regards to the assembly/installation time, Article 7 applies accordingly.
- 8.5. Insofar User only performs supervision of the assembly and/or installation activities of third parties, User is not liable for the activities performed by said third parties, provided that it cannot be attributed a failing except when it demonstrably fell short in its supervisory tasks. All results of failings of the supervised third parties are at the expense of Client, and insofar Client therefore incurs costs or suffers damage, Client shall compensate those costs and that damage to User.
- 8.6. When the Customer chooses to perform parts of the Delivery (or the work related thereto) himself, or to have it done by third parties, the Customer cannot derive any rights from designs, drawings, diagrams or other documents from the User. Neither can the Customer derive any rights from the instructions and/or recommendations given by the User. The User is neither responsible nor liable (nor held responsible on any other grounds) for work (or consequences) done by the Customer or third parties, regardless of whether the User has made or supplied materials for such work.

### **Article 9. Checking, sampling and testing**

- 9.1. Client shall check any Product, Software or Service provided by User on any incompleteness or inaccuracies and (if a sampling should take place) sample it within at the latest 14 days after delivery or, if assembly/installation was agreed upon, within at the latest 14 days after its assembly/installation. If User does not receive a written, specified report of a complaint from Client within that term, the delivered is deemed to meet the conditions of the Agreement and to be accepted by Client.
- 9.2. If a test by User was agreed upon, Client shall provide User with the opportunity to perform the tests and implement changes and/or improvement in accordance with the result of the test in accordance with the Agreement and as deemed necessary by User, such without delay after receipt of the Product or Software delivered by User or, if assembly/installation was agreed upon, after its assembly/installation. The test shall be performed without delay upon request of User in presence of Client. If the test results do not give cause for specified and justified complaints, as well as if Client does not provide User the opportunity to perform tests or to implement the improvements or changes deemed necessary, the Product or Software is deemed to meet the conditions of the Agreement and to be accepted by Client.
- 9.3. Client makes the facilities required for the sampling and/or testing, including those described in Article 8.2 sub f, as well as representative monsters of any to be processed materials, available to User in sufficient quantity, on time and free of charge at the correct location to allow the operating conditions of the Product or Software predicted by Parties to be simulated as much as possible. If Client does not fulfil this condition, the Product or Software is deemed to meet the conditions of the Agreement and to be accepted by Client.
- 9.4. In the event of minor faults or inaccuracies, especially those which do not or barely affect the Product or Software for the intended use, these shall regardless be deemed to meet the conditions of the Agreement and to be accepted by Client. In the event of sufficiently substantial faults or inaccuracies, User will remedy these through repairs or replacement of the faulty component, possibly at the premises of User, or by shipment of a replacement component, such always at the choice of User. All costs for activities that include more than what is described in the preceding sentence, such as (but not limited to) transport costs, travel and accommodation expenses and the costs for disassembly and assembly, are at the expense of Client.
- 9.5. User is authorized to proceed with repaying Client, instead of remedying the fault, for a part of the paid purchase price by Client to User for the faulty Product, Software and/or Service reasonably corresponding to the fault. In this event, User is entitled but not obligated to not repair, replace, perform anew or take back the Product, Software and/or Service. In no event is User obligated to compensate more than the aforementioned part of the purchase price that reasonably corresponds to the fault.
- 9.6. If the Product or Software is deemed to meet the conditions of the Agreement and/or to be accepted by Client for the purposes of this Article, Client waives the right to claim any compensation regarding this matter due to (alleged) non-conformity of the Product or Software.
- 9.7. User is not obligated to accept returned products from Client. The receipt of a return shipment by User does not imply the recognition by User of the indicated cause for the return shipment.

### **Article 10. Transfer of risk and title and retention of title**

- 10.1. From the moment in which a Product or Software is delivered, Client bears all risk for any direct and indirect damage that may be caused by or to the Product or Software, unless the occurrence of damage can be attributed to intent, gross fault or deliberate recklessness of the management employees of User.
- 10.2. If Client remains in default regarding the purchase of a Product, User has the right to charge Client with the costs for storage of the Product.
- 10.3. If User intends to transfer the title to Client through delivery, User retains the title of the Products pursuant art. 3:92 CC until Client has fully fulfilled its commitment arising from the agreements concluded between it and User, including any claims of User on Client due to non-performance of obligations towards User. If Client has at any time already fulfilled its existing obligations at that moment, the retention of title continues in the event that a new obligation regarding the matter arises later.
- 10.4. The Products delivered by User that fall under the retention of title on the basis of Article 10.2 may only be resold in the context of normal business operations. Client is not authorised to pledge the delivered goods or to encumber the goods with any other rights.
- 10.5. If Client does not fulfil its obligations or if User has a well-founded fear that Client shall not fulfil its obligations, User has the right to retrieve or have retrieved the delivered Products to which the aforementioned retention of title applies from Client or from third parties storing the Product for Client. Client is obligated to fully cooperate in this context.
- 10.6. If third parties wish to enforce any right or have any right enforced on the Products delivered under the retention of title, Client is obligated to immediately inform User of this in writing.
- 10.7. Client is obligated:
  - to insure the Products delivered under the retention of title and to keep these insured against fire and water damage and against theft and to provide for access the policies of these insurances to User upon first request;
  - to transfer all claims of Client against insurers regarding the Products delivered under the retention of title to User upon first request and/or (at the choice of User) to pledge it to User; by the General conditions becoming effective, Client gives User an irrevocable proxy to enter into said transfer or pledge , whether or not in advance;
  - to transfer the claims obtained by Client from its purchasers from reselling the Products delivered under retention of title to User upon first request and/or (at the choice of User) to pledge it to User; by the General conditions becoming effective, Client gives User an irrevocable proxy to enter into said transfer or pledge , whether or not in advance;
  - to visibly mark Products delivered under retention of title as property of User.
- 10.8. For any violation by Client of the provisions of Article 10, Client is payable to User a fine of 25% of the purchase price owed by Client to User of the Product or Products in question, with a minimum amount of EUR 15,000.00. The fine in question is without prejudice to any right of User to compensation.
- 10.9. The risk of the goods returned by Client to User remain with Client, unless (and in that case: until the moment in which) these Products are credited by User.

## **Article 11. Payment**

- 11.1. The payment of the agreed upon price including turnover tax and other applicable taxes and government levies shall be received by User from Client at the latest:
  - 1/3 (one third) part within 7 days upon concluding the Agreement;
  - 2/3 (two thirds) part within 7 days upon delivery.
- 11.2. Within 7 days after User charged additional work to Client, the payment for additional work shall be received by User from Client.
- 11.3. The invoices of User shall be paid integrally. Client is not authorised to apply any deduction, discount and/or settlement on the invoices of User.
- 11.4. If Client does not fulfil any payment obligation, regardless of whether it concerns an invoice provided by User to Client, towards User within the agreed upon or prescribed term by User, Client is in default by force of law. In that event, Client is required, from the moment of being in default, without such requiring any prior notice of default, payable to User the owed sum of the legal commercial interest as described in art. 6: 119a CC. In addition, Client is payable, without such requiring a prior notice of default, the actual extrajudicial costs made by User to User, of which Parties deem to be proven in advance to amount to at least 15% of the outstanding debts with a minimum of € 1,000.00 per each separate outstanding debt (concerning each separate invoice or claim on other grounds).

- 11.5. If User claims from Client fulfilment of payment obligation or other obligation in a judicial procedure and this claim is fully or partially decreed, then Client is obligated to pay all factually incurred costs by User in connection with this appeal, including costs for legal aid, to User. Client also has this obligation if Client began judicial proceedings to enforce its rights against User, which were fully or partially denied.
- 11.6. If Client enters into default in any way with regards to User, Client is held to provide adequate collateral in favour of User upon first written request, which settles (adequate) collateral for the fulfilment of the obligations belonging to Client.

## **Article 12. Prohibition of transfer and impossibility of transfer**

- 12.1. Client is not authorised to transfer its existing or future rights towards User to third parties without prior written permission from User.
- 12.2. Any existing or future rights to compensation of Client on User on whichever grounds are not eligible for transfer in the sense of property law pursuant art. 3:83 section 2 CC and as such cannot be pledged in the sense of property law. Parties may agree in writing that such a transfer and pledge shall be made possible in the sense of property law.

## **Article 13. Warranty and fulfilment**

- 13.1. Subject to the limitations listed below, User guarantees for six months upon delivery to or commissioning by Client (or, if a commissioning by User should take place, six months upon this commissioning or the preceding delivery or commissioning by Client) that the delivered or commissioned Product, Software and/or Service sufficiently possesses the agreed upon features required for the known intended (purpose of) use.
- 13.2. The warranty mentioned in Article 13.1 only applies for faults of the Product, Software and/or Service that are attributable to User and that are non-observable faults at the moment of delivery to Client, of which Client proves that they occurred within the terms listed in Article 13.1 exclusively or predominantly as direct consequence of a shortcoming in the fulfilment of the obligations belonging to User.
- 13.3. Fault that fall under the warranty described in Article 13.1 shall, insofar these oppose normal use of the Product, Software and/or Service, be remedied by User through repairs or replacement of the faulty component, possibly at the premises of User, or by shipment of a replacement component, such always at the choice of User. All costs for activities that include more than what is described in the preceding sentence, such as (but not limited to) transport costs, travel and accommodation expenses and the costs for disassembly and assembly, are at the expense of Client.
- 13.4. User is authorized to proceed with repaying Client, instead of remedying the fault, for a part of the paid purchase price by Client to User for the faulty Product, Software and/or Service reasonably corresponding to the fault. In this event, User is entitled but not obligated to not repair, replace, perform anew or take back the Product, Software and/or Service. In no event is User obligated to compensate more than the aforementioned part of the purchase price that reasonably corresponds to the fault.
- 13.5. Fault that occur fully or partially because of the reasons listed below are in any case excluded from the warranty:
  - a. the Client not observing operating and maintenance instructions and/or use of Products, Software and/or Services other than for the purpose or destination known in accordance with the Agreement;
  - b. standard wear and tear;
  - c. use by Client of chemicals of which Client may know that these may damage or alter or otherwise negatively affect the functioning of the Goods used or delivered by User;
  - d. the application of any government regulation regarding the nature or quality of the applied materials;
  - e. materials or products that have been used before and are thus not new, or otherwise faulty materials or products applied and/or processed by User on behalf of or in accordance with Client;
  - f. materials, products, working methods and constructions, insofar applied on explicit instruction from Client, as well as materials and products provided by Client;
  - g. third-party components engaged by User, insofar the third party did not provide warranty to User;
  - h. the ground/soil composition and/or ground/soil properties and/or changes to it, regardless of whether those properties or changes to it have a natural cause and regardless of whether those properties or changes to it were foreseeable to User or could have been foreseeable;
  - i. insufficient, inadequate and/or defective facilities, including (data) communication facilities, defective power supply, defective grounding terminal, overload or violence.



- 13.5. If Client does not adequately or timely fulfil any obligation resulting from the Agreement or an agreement related to it, User is not held to any warranty with regards to any of these agreements by whatever name.
- 13.6. If Client proceeds with assembly, disassembly, repairs or other activities or has a third party proceed with these activities without prior written permission from User with regards to the Product or Software, and/or with premature commissioning of these matters, any right to claims from the warranty lapses. The User provides no guarantee on Items or Software that are used for the work performed by the Customer himself or by third parties at the behest of the Customer.
- 13.7. Complaints regarding defects shall be reported by Client to User immediately and no later than 14 days upon discovery in writing and substantiated and shall be received by User within that term. If Client does not comply to this provision, it loses any claim against User with regards to the defects in question.
- 13.8. If User replaces any components/products as part of its fulfilment of its warranty obligations, the replaced components/products become property of User.
- 13.9. The warranty for the performed repair and revision activities or other services from User extends only to the proper performance of the instructed activities for a period of 6 months. This warranty only concerns the single obligation of User to perform the activities in question again if and insofar they were performed improperly. In this event, Article 13.3 applies accordingly.
- 13.10. No warranty applies to the inspections, advice and similar activities performed by user.
- 13.11. The Client shall maintain all critical processes of itself, as well as guard and secure it, including measures outside the (control operations- and cultivation process) computer. Guarding outside the computer means engaging equipment that is not connected to (or dependent on) the control computer in addition to the routine performance of (visual) checks. The Client holds all responsibility for the (timely) checks and calibration of measurement equipment.
- 13.12. If user performs any activities on Product, Software or any equipment or installation of Client in a more comprehensive sense, Client is obligated to check and change, if necessary, the configuration, calibration and such of the Product, Software, equipment or installation in question prior to, during and after said activities. User cannot be held liable for any changes of the configurations, calibrations and such in question.
- 13.13. The alleged non-fulfilment by User of its warranty obligations does not relieve Client of its obligations resulting from any agreement concluded with User. Client is not obligated to suspend any such obligations.

#### **Article 14. Force majeure**

- 14.1. In these General conditions, force majeure means the following: any circumstance arising outside the power of User – regardless of whether it was foreseeable when concluding the Agreement – that temporarily or permanently prevents fulfilment of the Agreement, as well as, insofar this is not already included, war, threat of war, civil war, riots, terrorism, sanctions and trade limitations established by the authorities, unrest, suspension of work by or illness of employees of User, lock out of workmen by Client, transport problems, fire, water nuisance (including floods), power failures, computer malfunctioning and other serious malfunctions. Force majeure also includes User failing Client as a result of failing of third parties engaged by User, such as (but not limited to) subcontractors, suppliers and transporters.

#### **Article 15. Exclusion and limitation liability for damages**

- 15.1. User shall not be liable for (or otherwise obligated with regards to) changes to the agreed upon work caused by the soil/ground composition of the Client, properties of that soil and/or changes to it, regardless of whether the soil composition, properties and/or changes to it where foreseeable for User or could have been foreseeable. User shall furthermore not be liable for (or otherwise obligated with regards to) the consequences of digging activities, any direct damage to the cables and/or ducts included, as well as the consequences of that.
- 15.2. Barring any liability of User for direct material loss, User shall not be liable for any (or otherwise obligated with regards to) indirect loss of Client. As such, User shall not be liable for (or otherwise obligated with regards to), among other things, consequential loss, loss due to delays, trading loss, lost sales and profit, growth and flourish loss, damage to or loss of goods provided by Client and personal injury. The exclusion of liability and obligation of User regards exclusion regardless of the foundation of liability (such as non-fulfilment of a contractual commitment, unlawful deed, commitments to repair or reverting or otherwise).

- 15.3. No appeal to Article 15.2 shall be made insofar this is unacceptable in accordance with standards of reasonableness and fairness in the event of intent or gross fault at the side of (the management of) User.
- 15.4. The scope of the total obligation of User on whichever foundation, including but not limited to liability for existing and future loss of Client resulting from violated obligations from agreements concluded with User shall be limited to the related factually payable amount to be received by User in accordance with the (liability or non-life) insurance.
- 15.5. If it is settled in court that the limitation of the scope of the total obligation of User (on whichever grounds) cannot be applied by force of Article 15.4 (if such is deemed in court unacceptable to the standards of reasonableness and fairness or in conflict with mandatory law), then the scope of the total obligation (including the liability of user for existing and future loss of Client) is limited to the total sum owed and to be owed by Client to User, and the total sum actually paid and will be paid by Client to User regarding the delivered Products and Services delivered by User to Client.
- 15.6. If it is settled in court that the limitation of the scope of the total obligation of User (on whichever grounds) cannot be applied by force of Article 15.4 (if such is deemed in court unacceptable to the standards of reasonableness and fairness or in conflict with mandatory law), then the scope of the total obligation (including the liability of user for existing and future loss of Client) is limited to the lowest amount possible to impose regarding this liability.
- 15.7. Any liability of User for loss of Client shall be limited to direct material loss that arose within 12 months upon delivery of the Product or Service to which the loss is related and insofar User received a written report from Client within 14 days upon discovery of the loss, containing a clear description of the loss, its cause and its moment of inception.
- 15.8. Any right to compensation of Client shall lapse if Client does not at all times immediately provides the required cooperation, in the opinion of User, to perform an investigation into the nature, scope and cause of the alleged loss by Client.
- 15.9. Client indemnifies User and compensates User for all claims of third parties (including clients of Client for which User acts as subcontractor) towards User for compensation of costs and/or losses for which User is not liable or would not be liable towards Client based on the General conditions or otherwise.
- 15.10. If User shall be liable for the loss suffered and to be suffered by Client, notwithstanding the exclusion of liability of User, Client may only claim (i) fulfilment or (ii) compensation. If Client claims fulfilment, its right to compensation lapses. If Client claims compensation, its right to fulfilment lapses.
- 15.11. Client is not authorised to settle any damage compensation claims with any payment obligation towards User.
- 15.12. Affiliated parties and (legal) entities that perform activities for User as part of employment, an agreement to provide services or otherwise with User, may also invoke this Article 15 regarding the limitation of their liability towards Client (see Article 2.2).

#### **Art. 16. Suspension and termination**

- 16.1. If an Agreement cannot be performed due to force majeure, User shall be entitled to either immediately suspend the performance of the Agreement (including the suspension to use Software by Client) or fully or partially terminate the Agreement, without User being held to any compensation. In the case of termination, User is authorised but not obligated to repossess the Product or Service provided to Client.
- 16.2. Both in the event of suspension and of termination pursuant Article 16.1, User shall be entitled to direct payment of the commodities, materials, components and other Products reserved, processed and/or fabricated for the performance of the Agreement, and such for the value to be attributed in reasonableness by User. In the event of termination pursuant Article 16.1, Client shall be held, pursuant the payable amount of the preceding sentence, to take possession of the Products listed therein within a term determined in reasonableness by User, in lack of which User is authorised to store these Products to their own choice at the expense and risk of Client or have these Products stored, or to sell these Products at their expense and risk.
- 16.3. If Client does not, not fully or not timely fulfil any of its obligations resulting for it from the Agreement or any related agreement, or if there exist good reasons for the fear that Client is or will not be capable of fulfilling its contractual obligations toward User, as well as if the business of Client has filed for bankruptcy, suspension of payment, provisional or executorial attachment of a substantial part of its assets, suspension, liquidation or fully or partial transfer – whether or not for security – of the company of Client, including the transfer or a significant part of its claims, User shall be entitled to immediately suspend the

performance of any of its agreements with Client without notice of default (including suspension of use of Software by Client) or to fully or partially terminate it, such without this leading to any claims for compensation or warranty and without prejudice to its other rights. Furthermore, User shall be entitled in the aforementioned cases to fully or partially cancel an order without notice of default or judiciary intervention and to reclaim the unpaid part of the delivered. Cancellation and reclamation do not affect the right of User to compensation. In these cases, any claim of User on Client shall be immediately and fully payable.

- 16.4. In the event of suspension pursuant Article 16.3, the agreed upon price shall be immediately payable, after deduction of the already paid terms, and User shall be store or have stored the materials, components and other products reserved, processed and/or fabricated for the performance of the Agreement at the expense and risk of Client. In the event of termination pursuant Article 16.3, the agreed upon price, insofar no prior suspension took place, becomes immediately payable, after deduction of the already paid terms, and Client is obligated to pay the aforementioned sum and to take possession of the Products included in it, in lack of which User is authorised to store these Products to their own choice at the expense and risk of Client or have these Products stored, or to sell these Products at their expense and risk.
- 16.5. Client shall not be entitled to suspend its obligations towards User. Client shall not be entitled to fully or partially terminate, cancel or change an Agreement pursuant art. 6:230 section 2 CC, or to fully or partially terminate based on unforeseen circumstances pursuant art. 6:258 CC.

#### **Article 17. Confidentiality**

- 17.1. Client shall be obligated to keep confidential all directly and indirectly obtained information of User and, as such, without prior written permission of User stating otherwise, not to announce it or make it available to third parties, and to exclusively use that information for the purpose for which the information was made available. This information concerns, among other things, quotations, drawings, calculations, software, descriptions and models provided by User.
- 17.2. If Client violates the preceding provision, User suffers loss as a consequence which Client shall compensate. The suffered loss for any violation is set in advance at a sum of EUR 15,000.00 per separate violation, without prejudice to the right of User to claim compensation for further loss that exceeds the sum set in advance. These claims for compensation of loss shall be payable immediately, without such requiring a prior notice of default from User.

#### **Article 18. Duty to inform and correspondence**

- 18.1. Client has a duty to inform towards User with regards to all information (in the widest sense of the word) of which Client knows, should know or could have known that this information could be of relevance to User in whichever way.
- 18.2. In its correspondence with User, Client shall use the postal and e-mail addressed designated by User. If Client uses a different address of User and User or the employee of User who should have taken note of the correspondence in question, does not take note of the correspondence in question (on time), that correspondence shall be deemed not sent and not received if User so chooses.

#### **Article 19. Period of limitation**

- 19.1. Rights to compensation of Client are limited to one year after such right arises.

#### **Article 20. No waiver of rights**

- 20.1. The exercise of its rights by User and the time at which and/or the order in which User does so is at the choice of User. User not exercising rights shall never be deemed as waiving rights.

#### **Article 21. Disputes**

- 21.1. In deviation of the statutory rules for the authority of the civil court, any dispute between user and Client shall in the first instance be settled by the competent sector of the court in Rotterdam, location Rotterdam. However, User shall remain entitled to summon Client before the competent court by law or by applicable international treaty.

#### **Art. 22. Applicable law**

22.1. The offers and/or agreements to which these General conditions fully or partially apply are governed by Dutch law, unless agreed upon otherwise by Parties in writing. The applicability of the United Nations Convention on contracts for the international sale of goods shall be excluded.

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