

# General Terms and Conditions of Sale and Delivery

*Intespring Holding and operating companies*

*Text last amended: 01 November 2014*

## **Article 1. Definitions**

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- 1.1 The following definitions are made within the framework of these General Terms and Conditions of Sale and Delivery:
- a) “the Client”: Every natural person or legal person who has requested an offer or has entered into an agreement with the Supplier in relation to (the supply of) any kind of goods and/or services under any name, not including consultancy services.
  - b) “the Supplier”: Intespring Holding B.V., as well as all of its operating companies Intespring B.V., Spring B.V. and Laevo B.V.
  - c) “the Agreement”: the agreements drawn up in writing between the Client and the Contractor relating to the purchasing and delivery of goods and/or provision of services to the Client;
- 1.2 That which is stated in writing in these General Terms and Conditions of Sale and Delivery, shall also be understood when it is sent by fax or e-mail.

## **Article 2. Applicability**

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- 2.1 These General Terms and Conditions of Sale and Delivery are applicable to all offers and agreements in which the Supplier supplies goods and services, with the exception of consultancy services, to the Client. The General Terms and Conditions for Consultancy Services from the Supplier are applicable to the provision of consultancy services.
- 2.2 If these General Terms and Conditions of Sale and Delivery conflict or appear to be incompatible with that which the Supplier and the Client have set out in a written agreement concluded between them, then that stated therein takes precedence.
- 2.3 Deviations from and/or additions to these General Terms and Conditions of Sale and Delivery are only possible if these have been agreed upon in writing by the Supplier and the Client.
- 2.4 The applicability of purchasing and/or other (general) conditions from the Client is expressly excluded.
- 2.5 The nullity or voidability of any provision of these General Terms and Conditions of Sale and Delivery shall not affect the validity of the other provisions of these General Terms and Conditions of Sale and Delivery. Where applicable, the Supplier and Client shall mutually agree upon a replacement provision, whereby the purpose and the meaning of the original conditions shall be heeded as far as possible.

## **Article 3. Quotations, offers and advertising**

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- 3.1 An assignment/order between the Supplier and the Client is only provided when the Client has returned the offer to the Supplier within the period prescribed for this, and the provision of the assignment has been confirmed in writing by the Supplier.
- 3.2 All quotations, offers and other advertising from the Supplier are free of obligation, unless the Supplier has expressly stated otherwise in writing.
- 3.3 The details stated in advertising, offers, websites, etc. are not binding.
- 3.4 The Client is responsible for the accuracy and completeness of the details that he supplies to the Supplier when compiling an offer and/or quotation.

## **Article 4. Price and payment**

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- 4.1 All prices are stated in euros (€) and exclude turnover tax (VAT), as well as other taxes imposed by or on behalf of the government. The Client must make all payments in euros.
- 4.2 Prices are quoted on Ex- Works, unless agreed otherwise.
- 4.3 The invoices from the Supplier must be paid within 14 days. The Supplier reserves the right to make the delivery conditional by requiring immediate payment prior to delivery.
- 4.4 The Supplier sends the invoice digitally to the Client. Upon request, a paper invoice can be sent.
- 4.5 If the agreement is concluded with several natural and/or legal persons, each of these (legal) persons is jointly and separately bound to pay the amounts due by virtue of the Agreement.
- 4.6 If the Client does not fulfil his payment obligations or does not do so within the prescribed period, he is obliged, without any reminder or formal notice being required, to pay statutory interest on the outstanding amount.
- 4.7 If the Client does not fulfil his payment obligations or does not do so within the prescribed period, the Supplier is entitled to postpone delivery of the goods until such time when the Client has fully fulfilled his payment obligations.
- 4.8 If, after being sent a reminder or after being given formal notice, the Client fails to pay the amounts due, the Supplier is entitled to outsource the debt collection. In that event, the Client is, in addition to the amount due, also obliged to pay all judicial and extrajudicial costs.
- 4.9 The Client is never entitled to suspend any payment or to settle amounts due. Nor shall the Client adopt a different approach, for example, by making a seizure himself, by effecting deduction of the amounts due.
- 4.10 The Client shall never be entitled to have a right of lien.
- 4.11 Contestation in relation to the amount on the invoice or the services or goods supplied is not a viable reason for suspending the payment obligation.
- 4.12 The Supplier is, at all times, entitled to require a security from the Client for the total amount for the services or goods.

## **Article 5. Retention of title**

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- 5.1 Without prejudice to the obligation of the Client to pay promptly, all of the goods delivered by the Supplier remain in the possession of the Supplier until all of its demands for payment have been resolved. The goods to be supplied are at the risk of the Client, as soon as they have left the Supplier. (If desired) the Client must insure his interest in the transportation and conservation of the goods himself.
- 5.2 The Client is not entitled to pawn unpaid goods or pledge them as security to third parties.
- 5.3 In the event of payment not being made on time, and after the first reminder has been sent, the customer is obliged to return the unpaid goods to the Supplier and to cooperate fully, for example, by allowing access to the room where the goods are stored or installed. The Supplier is entitled to claim compensation for losses, loss of profits and interest from the day of the delivery.

## **Article 6. Delivery times**

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- 6.1 The delivery times stated by the Supplier shall be heeded as far as possible.
- 6.2 Exceeding the delivery times, except in the case of intent or gross negligence attributable to the Supplier, never entitles the Client to compensation, dissolution of the agreement, or suspension of any obligation that is imposed on him by virtue of the agreement.

## **Article 7. Packaging, transportation and returned goods**

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- 7.1 With the exception of cardboard or light packaging, the packaging from the goods delivered by the Supplier is not included in the purchase price.
- 7.2 Packaging materials shall not be accepted by the Supplier.
- 7.3 Except in cases where this has been expressly otherwise agreed and stated in writing, the transportation of the goods is not included in the purchase price.
- 7.4 Returned goods shall not be accepted by the Supplier, except in cases where this has been expressly agreed and stated in writing.
- 7.5 In the event of returned goods being accepted by the Supplier, the costs must be borne by the Client.

## **Article 8. Damage**

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- 8.1 If damage to the goods or the packaging is evident upon delivery, the Client is obliged, before accepting the goods, to request the freight forwarder to draw up an official report, and if this is not done, the Supplier cannot accept any liability whatsoever.
- 8.2 If the Client takes care of the transportation of the goods himself, he must report any damage to the goods or the packaging before transporting the goods to the Supplier. The Supplier cannot accept any liability whatsoever for damage incurred during or after the transportation by the Client

## **Article 9. Liability and terms of the warranty**

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- 9.1 The goods shall be supplied in a condition and finish that is customary for the Supplier at the time of the delivery.
- 9.2 Any complaints relating to externally visible defects must be made in writing to the Supplier, at the latest, within 8 days of the goods being accepted. The reported complaints do not suspend the obligation to pay.
- 9.3 When supplying goods, the Supplier adopts different warranty periods. These are defined as follows:
- standard / CBW: Up to one year after the invoice date, the Client receives a warranty on all repairs or replacements (including freight and travel costs). Between 1 and 2 years after the purchase of the product, the supplier shall pay for 2/3 2/3 of all repairs / replacements (including freight and travel costs). Between 2 and 3 years after the invoice date, the CBW-certified shop shall pay for 1/3 of all repairs or replacements (including freight and travel costs).
  - full service 1 year: Up to one year after the invoice date, the Client receives a warranty on all repairs or replacements (excluding freight and travel costs).
- 9.4 The Client and the Supplier can agree on these or other warranty periods in the purchase agreement. If not otherwise specified in the Agreement with the Client, the following warranty periods shall be applicable:
- a) for private individuals: standard / CBW.
  - b) for business Clients: full service 1 year.
- 9.5 With regard to goods and/or parts that have been supplied by third parties to the Supplier under the manufacturer's guarantee, as a departure from the aforementioned, the guarantee for these is limited to the warranty given by the manufacturer to the Supplier. If a warranty is not applicable to goods and/or parts that have been supplied by third parties to the Supplier, the Supplier shall also not provide a warranty.

- 9.6 With regard to defects in the supplied goods, the liability of the Supplier shall, in any event, be limited to (as decided by the Supplier) free replacement or repair of defective parts, or the supply of a completely new product.
- 9.7 All costs that relate to the repair or replacement of the goods supplied such as travelling and accommodation costs and wages, shall be charged to the Client, unless otherwise defined in paragraph 9.3.
- 9.8 In the event of replacement, the goods to be replaced immediately become the property of the Supplier. They must be returned (carriage paid) to the Supplier; the shipping costs for replacement deliveries shall be charged to the Client.
- 9.9 The liability of the Supplier as well as every other liability arising from other events or circumstances shall be limited to compensating for the invoice value or resupplying the goods, as decided by the Client, in as far as the Supplier is able to supply the same kind of goods. Processing of the goods supplied by the Supplier by the Client or third parties results in every form of liability on the part of the Supplier being rendered invalid.
- 9.10 Third parties can never make claims against the Supplier.
- 9.11 The Supplier excludes liability for indirect loss, consequential loss, loss of profits, loss of goodwill, lost savings, as well as all forms of loss other than those mentioned in these General Terms and Conditions of Sale and Delivery, regardless of their type.
- 9.12 In the event of the supplied goods being replaced, the standard warranty period shall be applicable. In the event of repair or replacement of parts as referred to in paragraph 9.6, the period stated in paragraph 9.3 or paragraph 9.6 for the other parts and/or goods shall not be recognised or extended.
- 9.13 The technical characteristics stated by the Supplier for his articles have been accurately specified. Any slight deviation from the specified characteristics shall not give an entitlement to repair or replacement.
- 9.14 The Supplier is no longer obliged to give any additional warranty and/or compensation, if
- a) the Client does not fully fulfil his obligation arising from the agreement(s) concluded with the Supplier within the prescribed period.
  - b) the Client does not comply with the instructions (including the user manuals, etc.) from the Supplier pertaining to the use, maintenance, transportation, etc.
  - c) the Client does not make use of the service agreement (if applicable) provided by the Supplier in combination with the delivery of the product
  - d) the Client has independently made repairs and/or modifications to the supplied product.
- 9.15 The Client indemnifies and compensates the Supplier for all costs and losses that directly result from a claim by third parties towards the Supplier in relation to the execution of the transactions concluded by the Client, regardless of the basis for these claims.
- 9.16 Each claim for compensation becomes null and void 12 months after the claim has been submitted.

## **Article 10. Special provisions relating to prototypes and test setups**

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- 10.1 Unless otherwise agreed, performing tests, applying for permits and evaluating whether instructions from the Client comply with statutory or quality standards, is not part of the assignment of the Supplier relating to the delivery of prototypes and test setups.
- 10.2 The general provisions relating to the warranty and liability are not applicable to prototypes and/or test setups supplied by the Supplier.
- 10.3 The Supplier do not accept any liability for loss incurred as a result of using prototypes and/or test setups, except in the event of intent or gross negligence,
- 10.4 The Supplier does not provide any warranty for prototypes and/or test setups.
- 10.5 The Supplier shall state in writing which deliveries relate to prototypes or test setups.

- 10.6 If a prototype and/or test setup is jointly constructed by several parties, the Supplier does not accept any liability whatsoever for damage to the prototype and/or to the test setup caused during this work, except in the event of intent or gross negligence on the part of the Supplier.

## **Article 11. Intellectual and industrial property rights**

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- 11.1 The Supplier retains all rights relating to intellectual and industrial property that he uses or has used, or that have come into being during the execution of the assignment for the Client, in as far as these are substantiated by law.
- 11.2 The Client is thus expressly prohibited from taking out a patent for these rights relating to intellectual and industrial property.
- 11.3 The Client is expressly prohibited from replicating, disclosing or developing these products, including patentable designs, (interim) results, computer programmes, procedures, advice and other intellectual creations of the Supplier, in any way in the broadest sense of the word, possibly by deploying third parties.
- 11.4 The Client and/or a third party are, in relation to the goods supplied by the Supplier, prohibited from copying these goods, modifying them, deleting serial numbers or trademark(s) or from adding distinguishing mark(s) in order to give the impression that these goods originate from them. This is also applicable, in as far as these goods are not protected by any special law for industrial property such as patent law, or design or model rights.
- 11.5 The Client guarantees that the materials, data files, or other products and/or services made available by him to the Supplier do not infringe any intellectual property right of third parties.
- 11.6 The Client indemnifies the Supplier against any legal proceedings by third parties that are based on the argument that the use of the materials, data files, or other products and/or services made available by the Client, infringes any intellectual property right of third parties.
- 11.7 The Supplier is entitled to recover from the Client all losses that arise from the infringement of the intellectual and industrial property rights of the Supplier by the Client.

## **Article 12. Dissolution and termination of the agreement**

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- 12.1 The Agreement can only be dissolved by both parties as a result of failing to comply with the Agreement, if the other party fails imputably to fulfil the essential obligations imposed by the Agreement.
- 12.2 The agreement can be terminated in part or in full by both parties, without notice of default in writing being required, and with immediate effect, if the other party is granted suspension of payments, has filed for bankruptcy or has been declared bankrupt, or if effective control of the Client is transferred to a third party.
- 12.3 If, at the time of the dissolution as stated in paragraph 1, the execution of the agreement has already commenced, then the work performed as well as the related amount due and the costs incurred during the execution of the assignment, shall be excluded from the dissolution.
- 12.4 If the Agreement has been legally terminated, the Supplier shall never be required to pay any compensation.
- 12.5 The Supplier is, at all times, entitled to recover from the Client any costs incurred by him during the execution of the Agreement.

## **Article 13. Force Majeure (Act of God)**

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- 13.1 Within the framework of these General Terms and Conditions of Sale and Delivery, force majeure is defined as:
- a) A state of emergency: (Civil) war, rebellion, riots, natural disasters, etc.
  - b) Government measures

- c) Strikes, occupation of workplace, one or more members of staff not being available
- d) Unforeseen transportation problems
- e) Unforeseen electricity, Internet-, computer- and telecommunications disruptions
- f) Force Majeure (Act of God) affecting sub-suppliers of the Supplier
- g) The failure of sub-suppliers who are assigned by the Client to the Supplier
- h) The lack of hardware, software and materials from third parties that are assigned by the Client to the Supplier

- 13.2 The parties are not obliged to comply with obligations if force majeure (Act of God) exists.
- 13.3 The parties shall consult each other as soon as possible in order to discuss, minimise, and/or anticipate the causes and consequences of the force majeure situation.
- 13.4 After the force majeure situation ends, all obligations shall continue to remain in force.

## **Article 14. Confidentiality**

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- 14.1 Both parties undertake to keep confidential all details that they know, or can reasonably be expected to know, is of a confidential nature.
- 14.2 If desired, the parties can agree that on a list being compiled that contains the names of those persons that are authorised to consult confidential documents.
- 14.3 Confidential data that has been supplied may only be used for the purpose for which it has been supplied.
- 14.4 The parties shall mark confidential documents as such, by including the text "confidential" on the cover, or by marking these documents in a similar way.

## **Article 15. Applicable law and settlement of disputes**

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- 15.1 Dutch law is applicable to the agreements between the Supplier and the Client.
- 15.2 The applicability of the 1980 Vienna Sales Convention (Weens Koopverdrag 1980) is expressly excluded.
- 15.3 Any disputes relating to the agreement or to these General Terms and Conditions shall preferably be dealt with by means of arbitration, without prejudice to the right of each of the parties to request an appeal in arbitral proceedings and without prejudice to the right to take preservation measures.
- 15.4 If parties do not reach arbitration agreement within a reasonable period, the parties must apply to the law courts in The Hague (Den Haag), in the Netherlands.