

Delivery terms and conditions for Merrem Kunststoffen B.V.

1. Definitions

- 1.1 Capitalised terms and conditions in these general delivery terms and conditions have the following meanings:
- 'Merrem' means Merrem Kunststoffen B.V. which is based in Dinxperlo.
 - 'Agreement' means an agreement between Merrem and the client regarding the sale of goods or services by Merrem, entered into as described in Article 2.2.
 - 'Intellectual property rights' means all intellectual property rights, including copyrights, patents, utility models, trademarks, service marks, design rights, database rights, proprietary rights in information, know-how, and any other intellectual or industrial property rights as may or will exist anywhere in the world.
 - 'Goods' means all items delivered or to be delivered by Merrem to the client during the performance of an agreement.
 - 'Client' means any person or entity who or which enters into an agreement with Merrem.
 - 'Services' means all services which are provided by Merrem for or on behalf of the client in the performance of an agreement, whether or not in connection with the supply of goods.

2. Methods used in realising the agreement.

- 2.1 These delivery terms and conditions apply to and form part of an agreement and all other legal relationships between Merrem and the client in connection with the sale of goods or services by Merrem. Unless expressly agreed otherwise in writing, these delivery terms and conditions shall prevail over any other communications (whether oral or written) between the parties and which relate to the sale of goods or services by Merrem. The applicability of general terms and conditions which are used or are to be used by the client is expressly rejected.
- 2.2 An agreement is established between the parties: either following the conclusion of a written agreement by both parties, or after Merrem has issued an order confirmation, or after Merrem has fulfilled the order, whichever of these three events occurs first. All orders which are submitted by the client are submitted in the form of requests and do not bind Merrem in any way. Merrem is not obliged to accept an order.
- 2.3 If multiple formats of drawing up are provided for the manufacture of a product, Merrem will always rely on the STEP file if available.
- 2.4 For tolerances which are not specified by the client, Merrem will use the NEN-ISO 2768-1 standard with respect to processing. If the agreement concerns trade goods, we will use those tolerances which have been specified by suppliers for the thickness of sheet materials and for the diameter of raw materials.

3. Delivery and delivery times

- 3.1 Deliveries shall be ex-works as defined in the Incoterms® 2020 unless agreed otherwise.
- 3.2 The client shall be obliged to take delivery of the goods and to carry out all acts which can reasonably be expected of the client in order to enable Merrem to complete a delivery in accordance with the agreed Incoterms®. If the client breaches this obligation, any risk which may be attached to the goods, regardless of the applicable trade condition, shall pass to the client at the time at which any breach of this obligation takes place, and all costs which have been incurred by Merrem in connection with the delivery, as well as any further costs which may be involved in transportation, safekeeping, and storage, shall be borne by the client.
- 3.3 A request by the client to cancel or change an order (or part thereof) must be made and received in writing by Merrem and is subject to Merrem's written approval. The client may be charged a fee for changing or cancelling an order. If the client requests expedited delivery of shipments, Merrem reserves the right to charge the client for any costs which may be associated therewith.
- 3.4 Delivery times are indicative. Merrem's potential failure to meet a delivery date or delivery period does not constitute a failure to undertake to carry out the terms of the agreement.
- 3.5 Merrem reserves the right to deliver in batches and invoice these batches separately.

4. Inspection and returns

- 4.1 If Merrem has undertaken to arrange for the transportation of the goods, the client must examine the goods for any potential transportation damage and must ensure immediately upon arrival at the agreed destination that the correct quantity of goods has been delivered. If transportation damage or any deviation is found in the number of items which have been delivered from the quantity shown on the goods ordered, the client must provide a detailed description thereof on the transportation document which is to be signed following receipt of the goods. Any damage and/or discrepancies in quantities must be reported to Merrem within one day following receipt of the goods. If any deviations have occurred to the product itself, the client must

report this to Merrem within eight days of receipt of the goods. Reporting any damage, non-conformities, or shortcomings does not relieve the client of their payment obligations for the goods.

- 4.2 Returns will only be accepted by Merrem provided that:
- Merrem has approved the return in writing in advance
 - This is postage-paid and reimbursed
 - The goods are stock or standard goods
 - The delivery did not occur more than eight days beforehand
 - The returned goods do not exceed 10% of the amount of the original delivery.

5. Retention of title

- 5.1 All delivered goods remain the property of Merrem until the client has paid in full all amounts which the client is required to pay Merrem under the agreement or any other related contact, including interest and costs.
- 5.2 The client is authorised to dispose of the goods in the ordinary course of its business. The client shall notify the acquiring third party of the retention of title to the goods in favour of Merrem.
- 5.3 As long as they are not used, the client is obliged to keep the delivered goods clearly separated from other goods until ownership is transferred.

6. Pricing and payment

- 6.1. In the absence of a written agreement to the contrary, any prices which are set by Merrem are based on deliveries which are Incoterms® ex-works, exclusive of VAT and other taxes, and exclusive of the cost of providing non-standard packaging, and are stated in euros. If any ordered goods or services are subject to any taxes, Merrem may charge the client the relevant tax amounts, which must be paid by the client in addition to the quoted prices.
- 6.2. In the event of there being any changes in cost price factors, Merrem reserves the right to adjust the price accordingly. Merrem is further authorised to index prices annually.
- 6.3. Merrem is entitled to require advance payment from the client prior to delivery.
- 6.4. If payment after delivery has been agreed with the client, payment must be made as a net figure, and without any discount or set-off, by transferring the amount due to a bank account which has previously been specified by Merrem and within the agreed payment period after the invoice date. For orders with a total net invoice amount which is over € 375.00 (three hundred and seventy-five euros) excluding VAT, Merrem reserves the right to charge an administration fee. Merrem also reserves the right to charge a late payment surcharge. The value date which is shown on bank statements is decisive and is therefore considered as being the date upon which payment is or has been made.
- 6.5. All amounts which are owed by the client to Merrem under the terms and conditions of the agreement shall become immediately due and payable in full under the following circumstances:
- the client has failed to make an on-time payment to Merrem
 - Merrem terminates the agreement pursuant to Article 11
 - Merrem has objective and reasonable grounds to expect that the client is likely to file for bankruptcy.
- 6.6. If the client fails to pay any amount on time, Merrem shall be entitled to default any interest on such amount as remains unpaid, with said amount to be calculated from the time it becomes due until such time as it is paid in full. To the extent permitted by law, the rate of any default interest as mentioned in Article 6.6 shall be (i) the statutory commercial interest rate, or (ii) one (1) percent per month on the outstanding amount, whichever is higher.
- 6.7. Merrem is entitled to claim compensation for all costs, both extrajudicial and judicial (including any costs which are incurred through the necessity to secure legal assistance), where such are incurred by Merrem in connection with the collection of amounts which the client owes under the terms and conditions of the agreement.
- 6.8. Complaints regarding invoices must be submitted in writing within eight (8) calendar days after the invoice date. The client loses the right to file any complaints if this period is exceeded.

7. Intellectual property rights

- 7.1. Merrem and its licensors reserve all intellectual property rights in respect of the goods or services. The agreement does not constitute a transfer of or licence to any intellectual property rights or know-how with respect to the goods or services, or to any drawings, documents, or software which may have been made available to the client, other than a limited licence to use the goods or services, drawings, documents, or software as set forth in, and in accordance with, the agreement. Merrem does not warrant that the goods or services do not infringe upon the intellectual property rights of any third party.

- 7.2. If Merrem creates or authorises the creation of any work (which may include goods, documentation, or other results which may be a product of the company's services), based on materials which are provided by the client, the following shall apply unless otherwise agreed upon:
- a) Merrem is granted an irrevocable, worldwide, royalty-free, fully paid, non-exclusive, and perpetual licence under all intellectual property rights to use such materials for the creation of such work or for Merrem's own internal business purposes
 - b) The client declares and warrants that the materials do not or will not infringe or violate the intellectual property rights of third parties and will indemnify and hold Merrem to be blameless in terms of any claims or the consequences of claims by third parties based on an (alleged) infringement or other unauthorised use of their intellectual property rights in connection with those materials which have been provided
 - c) All intellectual property rights which may be applicable to or which relate to such work where it is so created shall belong exclusively to Merrem or its licensors.

8. Warranty

- 8.1 Notwithstanding Article 4.1, the client shall notify Merrem in writing of any discovered nonconformity in the goods within eight (8) calendar days of receipt of the goods, specifying the nature of any perceived nonconformity and providing all available documents, reports, and other evidence which may be necessary for Merrem to be able to assess the alleged nonconformity, subject to the forfeiture of the right to bring an action for nonconformity against Merrem.
- 8.2 Upon receipt of a notice of nonconformity as described in Article 8.1, the client shall arrange shipment to Merrem and Merrem shall, upon receipt of the goods, be allowed a reasonable period of time to evaluate the notice and the goods and, if applicable, propose an appropriate remedy. If Merrem confirms the alleged nonconformity in writing to the client, Merrem will reimburse the client for any reasonable return shipping costs which may have been incurred by the client. No goods will be returned to Merrem without the prior approval of Merrem.
- 8.3 Merrem has no warranty obligations if the alleged defect or nonconformity has occurred as a result of normal wear-and-tear, stress testing, exceeding the specified maximum conditions of use, abuse, negligence, improper handling, improper installation, improper storage, improper transportation, alteration, use in combination with other goods, or under other circumstances which may be attributable to the client.
- 8.4 The sole and exclusive obligation of Merrem, and the sole and exclusive right of the client with respect to claims under this warranty, shall be limited, at Merrem's option, to the replacement or repair of nonconforming goods or to an appropriate credit of the purchase price thereof. To the extent that ownership has already passed to the client, non-conforming goods shall become the property of Merrem as soon as they are replaced or credit is issued. Unless otherwise agreed in writing, the client shall not take any legal action on the basis of the nonconformity of the goods, or bring a counterclaim on the basis thereof, as a result of any action brought by Merrem against the client on the basis of non-performance of the agreement.

9. Liability

- 9.1 The parties agree that under no circumstances shall the client be entitled to claim any compensation under the agreement for indirect, incidental, consequential, or punitive damages, including but not limited to lost profits, lost sales, coverage costs, or property damage, regardless of whether Merrem had been advised of the possibility of such damages having taken place or being at risk of taking place. It is understood, however, that any amounts which are paid to a third party pursuant to Article 9.3 shall be considered as being direct damages between the parties.
- 9.2 Without prejudice to Merrem's obligations under Article 8, Merrem's liability for direct damages under an agreement shall not exceed (a) fifty (50) percent of the purchase price which is paid to Merrem for the affected goods or services under such an agreement in the twelve (12) months preceding the event which itself gives rise to the claim, or (b) €100,000.00 (one hundred thousand euros), whichever is the lower of the two.
- 9.3 Merrem shall not be liable for any damage which may be caused to third parties as a result of defects in the design and manufacture of the goods and their components, except and to the extent to be determined in accordance with applicable compulsory statutory provisions which serve to govern liability for death, personal injury, or damage to personal property which may be directly caused by defective goods.
- 9.4 The client shall indemnify Merrem, holding it to be blameless for any or all third party claims for damages where, for whatever reason, such a potential claim involved the party in question having suffered damages as a result of, or caused by, Merrem's own goods or services, unless Merrem is indeed directly responsible for such damages pursuant to Article 9.3.

9.5 Limitations on any liability shall not apply to the injured party in the event that any damage which is suffered is the result of the intent or gross negligence of either party or when liability cannot be excluded or limited under applicable compulsory laws.

10. Modifications to goods

10.1 Unless expressly laid out otherwise in the agreement, Merrem is permitted to apply a limited level of deviation with respect to the specifications or quality of the goods, such as in terms of colour, quantity, size, weight, or shore hardness. If, in Merrem's opinion, this deviation results in a substantial change to the goods in question, Merrem will notify its client of this in writing within thirty (30) calendar days, after which the client has the right to rescind the agreement within a period of fourteen (14) days, unless otherwise agreed upon.

11. Termination, dissolution, and suspension

11.1 Merrem is authorised to terminate, rescind, or suspend the performance of the agreement in whole or in part with immediate effect, and without requiring judicial intervention or any notice of default, without prejudice to Merrem's rights under the agreement or applicable law, under the following circumstances:

- (a) The client dies, files for suspension of payments, files for bankruptcy, is declared bankrupt, or applies for admission to the debt restructuring scheme
- (b) A declaration of bankruptcy has been filed on the part of the client
- (c) The client fails to fulfil any obligation under the law or these terms and conditions; if all or part of an agreement is terminated by Merrem, the client is obliged to pay compensation to Merrem for all costs or loss of profits in relation to the terminated agreement.

11.2 Upon the termination of the agreement, and for whatever reason, the client shall purchase all goods which are held in stock by Merrem and which are intended for the client within seven (7) days of the termination of the agreement, and shall pay the then-current price and shall accept the goods immediately upon payment.

12. Compliance

12.1 The client(a) declares and warrants that no trade sanctions which have been imposed by the USA, EU, UK, or UN apply to it, and (b) that it will comply with (and not engage in any activities, practices, or conduct which may constitute a criminal offence under) all applicable laws, statutes, regulations, and legal codes including those relating to (i) trade restrictions or export controls (including trade sanctions which have been imposed by the USA, EU, UK, or UN) with respect to the goods; and (ii) will also cooperate in the fight against bribery and corruption, providing full evidence of compliance with the foregoing as such as Merrem may reasonably and periodically request.

12.2 The client shall indemnify and hold Merrem entirely blameless in relation to all claims, liabilities, fines, and additional costs and expenses which Merrem may incur as a result of the client's failure to comply with applicable laws, rules, and regulations.

13. Applicable law and competent courts

13.1 All agreements which have previously been concluded between the parties (or which are to be concluded), along with the general (delivery) relationship between the parties (if applicable), as well as any tort claims which may have a connection with the agreement, shall be governed exclusively by Dutch law and not the Vienna Sales Convention.

13.2 The parties irrevocably consent to the exclusive jurisdiction of the competent court in Gelderland in connection with any dispute or litigation which may arise out of or in connection with all agreements which have been concluded between the parties (or which are to be concluded), along with the general (supply) relationship between the parties (if any), as well as any tort claims which may have a connection with the agreement.

14. Additional terms and conditions

14.1 If any of the provisions of the terms of delivery are held to be invalid or unenforceable, such invalid or unenforceable provisions will be replaced by valid, enforceable provisions which most closely match the intent of the original provisions, and remaining provisions will be upheld.

14.2 Merrem may assign its rights and obligations under this agreement or these delivery terms and conditions. The agreement or these delivery terms and conditions shall benefit Merrem's successors and assigns in title.

14.3 The failure of either party to insist upon or enforce strict compliance by the other party with respect to any provision of the delivery terms and conditions, or a failure to exercise any right under the delivery terms and conditions, shall not be construed as a waiver or relinquishment to any extent whatsoever of the right of such

party to assert or invoke any such provision or right in that or any other case; instead, the same shall remain in full force and effect.

15. Complaint handling and disputes

15. Merrem has a sufficiently publicised complaints-handling procedure in place, and is able to handle a complaint in accordance with this complaint-handling procedure.
- 15.2 Complaints about the performance of the agreement must be submitted to Merrem within a reasonable time, being fully and clearly described, after the client has identified any alleged defects.
- 15.3 Complaints which are submitted to Merrem will receive a response within a period of fourteen days from the date of receipt of the initial complaint. If a complaint requires a foreseeably longer processing time, Merrem will respond within the fourteen day period with a notice of receipt and an indication of when the client can expect a more detailed answer.
- 15.4 If the complaint cannot be resolved by mutual agreement, a dispute may arise which may require dispute resolution services.
- 15.5 All disputes which may arise from those agreements which have been concluded between the parties, including the more simple matter of being able to collect any amounts which are due, shall be brought before the civil courts within the country in which Merrem has their head offices, if Merrem so desires, insofar as the civil courts are legally competent to carry out such proceedings.

16. Force majeure

- 16.1 In cases which involve force majeure-related circumstances, Merrem is entitled to dissolve the agreement in whole or in part without being liable for any damages.
- 16.2 The term 'force majeure' refers to any circumstances which are beyond Merrem's control and which may render impossible the proper performance of the terms and conditions of the contract, either temporarily or permanently. In the case of it becoming temporarily impossible to properly perform the terms and conditions of the contract, Merrem also has the right to suspend the performance of its services without being obliged to pay any damages.
- 16.3 Circumstances which comply with the definition of non-attributable non-performance business interruptions include: war, riots, mobilisation, domestic and foreign civil unrest, government measures, strikes and lock-outs by employees, or the threat of such strikes and lock-outs, along with similar circumstances; or disruption to the currency exchange rates which exists at the time at which the contract is agreed by both parties; or business interruptions due to fire, accidents, or other incidents and natural phenomena, and all regardless of whether any such non-performance or late performance takes place on Merrem's business premises, or those of their suppliers or any third parties which have been engaged by them for the implementation of their commitments.
- 16.4 If the client should in any way fail to promptly comply with their obligations towards Merrem, in the event of any cessation of payment, or an application for (provisional) suspension of payment, or bankruptcy, or attachment under execution, or cession of estate, or liquidation of the client's business, all bills and other amounts which the client owes to Merrem by virtue of any contact will immediately become due and payable in full.

17. Amendment clause

- 17.1 Entrepreneur reserves the unilateral right to modify the general terms and conditions, and without the client's consent.
- 17.2 Amendments to these terms and conditions shall be effective only after they have been published in an appropriate manner, provided that, in the event of applicable amendments being made during the period of validity of an offer, the provision which is most favourable to the client shall prevail.

18. Severance clause

- 18.1 Should any provision of the terms and conditions be ineffective or unenforceable, this will not affect the effectiveness of the contract and the remaining terms and conditions. The invalid or unenforceable provision must be replaced by an effective or enforceable provision consistent with its meaning.