

General terms and conditions of delivery and payment

General terms and conditions of delivery and payment of the private company with limited liability Aerofilm Systems B.V., with its registered office in and its principal place of business in Eindhoven (KvK number: 17053698), filed at the Chamber of Commerce.

In these general terms and conditions Aerofilm Systems B.V. shall be referred to as "Contractor"; the other party shall be referred to as "Client" in the event of an agreement (irrespective of qualification of the agreement). "Client" in these terms and conditions shall be taken to mean: every (legal) person, who has concluded or wishes to conclude an agreement with Contractor and, in addition to him, his representative (s), attorney(s), assignee(s) and heirs.

Article 1. Applicability terms and conditions

1. The current terms and conditions shall apply to and be part of all offers, quotations from Contractor, commissions granted to Contractor and agreements concluded by him under whatever name, and also apply to their implementation, whereby Contractor shall also deliver goods and/or services to Client of whatever nature, also when these goods and/or services are not described (in detail) in these terms and conditions.
2. Contractor shall only carry out his deliveries under the applicability of these terms and conditions. Contractor shall not agree with the applicability terms and conditions applied by Client, also not if Client refers to them and/or sends them, unless agreed otherwise in writing.
3. Departures from and additions to these terms and conditions shall only be valid when they have been confirmed by Contractor explicitly and in writing.
4. If and insofar as one or more of the provisions from these terms and conditions should prove to be void or voidable, this shall not affect the validity of the other provisions. The void and/or voidable provision shall be replaced by a provision in consultation between parties that shall come close to the aim, essence and meaning of the previous provision as much as possible.
5. Contractor can always make (more specific) demands regarding communication between parties or perform juristic acts by e-mail.

Article 2. Offers, quotations and order confirmations

1. Each offer or quotation on the part of Contractor, in whatever form, shall be free of obligations, unless explicitly stated otherwise. Revocation by Contractor shall still be possible at once after acceptance.
2. Quotations without an explicit period of acceptance shall be valid during thirty days after the date of quotation.
3. The sending of offers, quotations and/or (other) documentation shall not oblige Contractor to accept an order. Client shall be notified by Contractor about non-acceptance as soon as possible, but in any case within 14 days.
4. Contractor shall reserve the right to refuse orders without stating reasons or send the deliveries COD.
5. All price lists, cost specifications, brochures provided with a quotation or offer and other data referring to goods and/or services of Contractor shall only be binding upon Contractor if Contractor confirms this explicitly in writing on the order confirmation. In all other cases, that is to say, when Contractor only sends the aforementioned to market parties and/or Client free of obligations, these market parties and/or Client cannot derive any right from these price lists, cost specifications etc. in respect of Contractor. The various statements shall be made as accurately as possible. Apparent slips of the pen and/or errors can be corrected by Contractor.
6. All data, information, pictures, descriptions, dimensions etc. provided with a quotation or offer or otherwise shall remain intellectual property of Contractor. Whoever infringes this intellectual property [copyright] shall act unlawfully towards Contractor, in relation to which Contractor shall take legal action. Contractor shall be able to claim a full compensation from the infringing party.
7. No rights may be derived from the content of brochures of Contractor in respect of Contractor. Colour combinations, dimensions and/or descriptions included in these brochures shall not be binding upon Contractor.

Article 3. Agreement

1. Contractor shall send an order confirmation to Client at once after reaching agreement regarding the sale and delivery of his goods and/or services to Client, in which the most important elements of the agreement have been included.
2. Except for an immediate notice to the contrary from Client, the order confirmation shall serve as proof of the reached agreement and/or concluded agreement.
3. If no quotation or order confirmation is sent for transactions because of their nature and extent, the invoice shall be considered to represent the agreement correctly and completely, except if a complaint is received within 3 working days after the invoice date.
4. An agreement shall be considered to have been concluded if the commission and/or order is actually implemented by Contractor and Client does not protest at once against this implementation.
5. Verbal commissions and/or orders shall be carried out in conformity with the notes made by Contractor and the interpretation given to this. Client shall obviously be entitled to provide evidence to the contrary.
6. Every agreement shall be concluded by Contractor under the suspensive condition that Client – exclusively at the discretion of Contractor – appears to be sufficient creditworthy for the financial observance of the agreement.
7. When or after concluding the agreement, Contractor shall insist on a security from Client for observing his payment and/or other obligations before commencing with the implementation of the work and/or delivery of the sold goods/services.
8. If changes are still required by Client in the implementation of the agreement after the commission has been granted, Contractor shall be notified in writing and on time. If the aforementioned changes are stated verbally or by telephone, the risk for the implementation of the agreement shall be borne by Client.
9. Contractor shall reserve the right to make a change in the price on account of changes in the commission, if necessary.
10. Changes made in an already granted commission may have as a result that the delivery time agreed before the changes is exceeded by Contractor. Contractor shall not be liable for such delays.

Article 4. Implementation of the agreement

1. Contractor shall determine the way in which he thinks that the commission should be carried out. He shall be obliged, if required, to inform Client in advance about the way in which the implementation shall be realised, unless this is in conflict with the nature of the commission.
2. Contractor shall be entitled, if he considers this to be necessary or desirable in order to correctly carry out the commission granted to Contractor and after having consulted Client, to call in others to implement the agreement, of which the costs shall be passed on to Client in conformity with the provided price statements.
3. Client shall be obliged to provide all information and documents to Contractor on time that are necessary for the correct implementation of the agreement and Client shall be obliged to provide any assistance whatsoever.
4. Contractor shall be entitled to suspend the implementation of the commission until the moment that Client shall have complied with the obligations referred to in the previous paragraph.

Article 5. Prices

1. All prices shall be expressed and considered to have been quoted in euros, unless agreed otherwise. Any changes in the rates of exchange shall be passed on.
2. All prices shall be based on delivery ex company, warehouse or other storage depot of Contractor, unless agreed otherwise.
3. All prices shall exclude turnover tax, import duties, other taxes, levies and rights and exclude those costs that are to be borne by Client as a result of the agreement between parties. The prices shall be based on the rates, wages, import duties, taxes and other price-determining factors that apply at the time of concluding the agreement.
4. If one or more of the factors change when an agreement has been concluded with a term exceeding three months, Contractor shall also be entitled to change the offered or agreed prices accordingly and with retroactive force until the moment of change. At the request of Client the changes shall be demonstrated. The term of the agreement shall be taken to mean the time between the date on which the commission has been granted by Client and the date on which Contractor starts with the work or delivers the sold goods/services. Such a price change shall not entitle Client to dissolve the agreement.

Article 6. Cancellation

If Client wishes to cancel an agreement after it has been concluded, 10% of the order price (incl. VAT) shall be charged as cancellation costs, without prejudice to the right of Contractor to a full compensation, including lost profit.

Article 7. Transport, Delivery & Risk

1. The method of transport, shipment and package etc. shall be decided by Contractor by applying his sound commercial practice, that is to say, if Client does not provide any specific instructions. Any specific wishes of Client regarding the transport/shipment shall only be carried out when Client states that he shall bear the additional costs.
2. With a purchase the delivery shall take place "Ex Works (EXW)" in conformity with Incoterms® 2010; the risk of the goods shall be transferred when Contractor makes them available to Client.
3. Irrespective of the provisions in the previous paragraph Client and Contractor can agree that Contractor shall take care of the transport. In that case the risk of storage, loading, transport and unloading shall also be borne by Client. Client can insure himself against these risks.
4. When seller installs and/or mounts the sold good, the risk of the good shall also be transferred when Contractor makes the goods available to Client in the business premises of Contractor or at a different agreed place.
5. Contractor shall be entitled to deliver in parts (partial deliveries), which can be invoiced separately.
6. The delivery and implementation periods stated by Contractor shall always be approximate and shall not be considered as a fatal period, unless explicitly agreed otherwise in writing. In the event of overdue delivery Contractor must therefore receive a written notice of default.
7. Exceeding the delivery time shall not oblige Contractor to pay any compensation not shall it entitle Client to dissolve the agreement wholly or partly.
8. When the goods/services have not been purchased by Client after the expiry of the delivery time, they shall be stored at his disposition, at the expense and risk of Client.

Article 8. Securities & Retention of title

1. After delivery Contractor shall remain the owner of the delivered goods/services as long as Client:
 - a. fails or shall fail to observe his obligations from this agreement or other similar agreements;
 - b. does not pay or shall not pay for work from such agreements that has been carried out or will be carried out;
 - c. has not paid claims that result from the failure to observe the aforementioned agreements such as damage, fines and costs.
2. In the event of an overdue payment of a claimable sum, moratorium on payments, bankruptcy, suspension of payment, winding-up of Client, or death when Client is a natural person, Contractor shall be entitled to cancel and/or dissolve the order and/or agreement wholly or partly without any proof of default or judicial intervention and claim the unpaid part as his property, that is to say, the unpaid part of the delivery to which the retention of title of Contractor is attached.
3. Cancellation and withdrawal shall not affect the entitlement of Contractor to a compensation for loss or damage. In these cases each claim of Contractor against Client shall be claimable immediately and completely.
4. If Client has not paid the agreed price and the goods/services in question have been sold and delivered to third parties, Client shall grant irrevocable power of attorney now for then to Contractor for that case, and he shall provide all necessary information to Contractor to establish a pledge on that claim against this third party, and Contractor shall notify Client or the aforementioned third party, if necessary, about the nature and sum of the claim for which the pledged goods shall be a security.



Article 9. Payment

- All invoices shall be paid by Client in agreement with the payment conditions stated on the invoice. If there are no specific conditions, Client shall pay within 20 days after the invoice date. Client shall be entitled to set off or suspend a payment. The currency date stated on the bank/giro statements of Contractor shall be decisive and therefore regarded as the payment day.
- If payment has not taken place within 20 days after the invoice date or within the agreed term of payment, Client shall be in default and Client shall pay a default interest to Contractor from the day of default that equals 1.5 % per calendar month, calculated over the purchase price or the part of the purchase sum that is still unpaid. All extrajudicial and judicial costs to be incurred by Contractor shall also be paid by Client. The extrajudicial collection costs shall be established according to the collection rate that is valid then as applied by the Courts in the Netherlands, with a minimum of 15% of the unpaid sum. The judicial costs shall also include all actual costs of legal and lawsuit assistance incurred during a judicial procedure that exceed the winding-up rate.
- Payments made by Client shall always serve to settle all payable interest and costs and subsequently reclaimable invoices that have been outstanding longest, even if Client states that the payment refers to a later invoice.
- If Client:
 - is declared to be bankrupt, assigns an estate, submits a request for a moratorium in payments, or his properties are seized wholly or partly,
 - dies, is placed under guardianship or is dissolved,
 - does not observe an obligation that rests on him on account of the Law or these terms and conditions,
 - fails to pay an invoice sum or a part of this sum within the period that applies to this,
 - proceeds to discontinue or transfer his business or a major part of the business, including the property brought into the business, to a company to be incorporated or an already existing company, or if Client proceeds to change the objective of his company,

Contractor shall be entitled, as a result of the mere occurrence of one of the aforementioned conditions, to either dissolve the agreement, or claim any sum payable by Client in its entirety at once, without any warning or proof of default being required on account of the services granted by Contractor, all without prejudice to the entitlement of Contractor to a compensation of costs, damages and interest.

Article 10. Complaints

- Client shall be obliged to inspect the delivered goods and the package at once during delivery with regard to any shortages and/or visible damages, or carry out an inspection after an announcement by Contractor that the goods are at the disposal of Client.
- Any shortages in and/or damages of the delivered goods and/or package which have been established at delivery, must be stated on the delivery note, invoice and/or transport documents by Client or a third party, in default of which Client shall be considered to have approved the delivery. In that case complaints with respect to this shall not be dealt with anymore.
- Any complaints shall only be dealt with by Contractor, if they have been received directly by Contractor in writing within 5 days after delivery of the performance in question, under accurate statement of the nature and basis of the complaints.
- If it has been agreed that payment shall take place afterwards by invoice, complaints about the invoice shall be submitted within 14 days.
- After the expiry of these terms, Client shall be considered to have approved the delivered goods or the invoice. In that case complaints shall not be dealt with anymore by Contractor.
- The handling of complaints by Contractor shall not apply as an acceptance of liability in whatever form.
- If the complaints of Client are deemed to be well-founded by Contractor, Contractor shall solely be obliged to perform correctly as yet or, to be decided by Contractor, to refund the purchase price through a credit entry to the sum of the performance. Client shall not be entitled to set off paid sums against still outstanding invoices.
- The delivered goods can only be returned after prior written permission of Contractor, under terms and conditions to be decided by Contractor.

Article 11. Liability and guarantees

- Irrespective of the question whether the liability of Contractor is covered by insurance, the total liability of Contractor due to an attributable failure to perform this agreement shall be limited to compensation of the direct damage not exceeding the sum stipulated for this agreement (excl. VAT). If the agreement is mainly a continuing performance contract with a term exceeding one year, the sum stipulated for the agreement price shall be fixed at the total of the compensations (excl. VAT) stipulated for one year. If Contractor is sued by a third party for a damage of which the sum exceeds the invoice sum referred to in the previous sentence, Client shall fully indemnify Contractor against this additional sum through compensation to that third party. However, in no case shall the total compensation for direct damage exceed € 2,500,000 (two million five hundred thousand euros). Direct damage shall solely be taken to mean:
 - reasonable costs that Client would have to incur in order to match the performance of Contractor to the agreement; this replacement damage shall, however, not be compensated if the agreement is dissolved by or on demand of Client.
 - reasonable costs, incurred to establish the cause and extent of the damage, insofar as the establishment refers to direct damage within the meaning of these terms and conditions;
 - reasonable costs, incurred to prevent or limit damage, insofar as Client proves that these costs have resulted in a limitation of direct damage within the meaning of these terms and conditions.
- The liability of Contractor regarding damage as a result of death or physical injury or due to material damage of goods shall never exceed a total of € 2.500.000 (two million five hundred thousand euros)

- Liability of Contractor regarding indirect damage, consequential loss, lost profit, missed savings, reduced goodwill, loss due to operational standstill, loss as a result of claims by buyers of Client, destruction or loss of data, damage related to the use of goods of materials of third parties prescribed by Client to Contractor, damage related to calling in suppliers prescribed by Client to Contractor and all other forms of damage as mentioned in article 11.1 and 11.2, by any cause whatsoever, shall be excluded. In any case Contractor shall not be liable for damage that occurred or was caused by the incorrect use of the delivered goods or by their unsuitability for the purpose for which Client has purchased them.
- The restrictions referred to in previous paragraphs of this article 11 shall cease to have effect if and insofar as the damage is the result of intent or gross negligence of Contractor or his managers.
- The liability of Contractor due to an attributable shortcoming in observing an agreement shall only apply in all cases if Client declares in writing that Contractor is in default immediately and properly, whereby a reasonable period to redress the shortcoming is granted, and Contractor also continues to fail imputably after this period in observing his obligations. The notice of default must contain an as complete and detailed description as possible of the shortcoming, so that Contractor is able to respond adequately.
- A condition for the event giving rise to any right to claim compensation shall always be that Client notifies Contractor in writing about the damage as soon as possible after it has occurred. Each claim for compensation against Contractor shall expire by the mere lapse of 12 months after the event giving rise to the claim.
- Client shall indemnify Contractor against all claims of third parties due to product liability as a result of a failure in a product or system supplied to a third party by Client and which also included equipment or other materials delivered by Contractor, except where and insofar as Client proves that the damage has been caused by this equipment or other materials.
- The provisions in this article shall also apply in favour of all (legal) persons which Contractor has called in to implement the agreement.
- Guarantees shall not be given by Contractor, unless explicitly confirmed in writing.

Article 12. On-call orders

- If it involves an on-call order and no period has been agreed within which the call should take place, the on-call period shall be considered to be the last day of the delivery period and the delivery shall actually take place within at the latest 15 working days thereafter.
- If an on-call period has been agreed and Client has not issued a call within this period, Contractor shall send a written warning. In this warning an additional on-call period will be stated of 8 working days, commencing on the date of the warning in question. If no call has been issued again within this additional on-call period, Contractor can choose between delivering the order as yet or storing the ordered goods at the expense and risk of Client.

Article 13. Force majeure

- If Contractor is of the opinion that he is/shall be in a state of force majeure, he shall notify Client immediately about this.
- Force majeure shall be taken to mean all circumstances that could not have been avoided in reason by Contractor or of which Contractor could not prevent the consequences in reason, including: strikes, fire, work interruptions, machinery breakdown, lack of raw materials, bankruptcy of suppliers, stagnation in delivery, transport difficulties.
- In the event of force majeure Contractor shall be entitled to either maintain the agreement with suspension of the obligations of Contractor for the period of the force majeure or dissolve the agreement wholly or partly due to unforeseen circumstances. Client can order Contractor in writing to state his choice within 10 days. Under no circumstance shall Contractor be obliged to pay damages to Client.
- Contractor shall be entitled to claim payment for the work that was carried out with the implementation of the agreement in question, before the circumstance that caused the force majeure was apparent.

Article 14. Confidential information

Each party shall guarantee that all data received from the other party with regard to which it is known or should be known that they are confidential data shall remain confidential, unless there is a legal duty to disclose that information. The party that receives confidential data shall only use them for the purpose for which they have been provided. Data shall in any case be regarded as confidential if they have been designated as such by one of the parties.

Article 15. Export

In the event of the export of goods by Client, the relevant export provisions shall apply. Client shall indemnify Contractor against all claims of third parties that are related to offences to be attributed to Client regarding the applicable export provisions.

Article 16. Disputes

- All offers, order confirmations, agreements and their implementation shall be governed by Dutch law, with the exclusion of the United Nations Treaty regarding international purchase agreements regarding movable property of 11 April 1980 (Bulletin of Treaties 1986,61) (Vienna Sales Convention (CISG)).
- All disputes, of a factual as well as a legal nature, including those which are only considered as such by one party, resulting from or related to the agreement to which these terms and conditions apply or resulting from or related to these terms and conditions themselves and their explanation or implementation, shall only be settled by the competent court Oost-Brabant in 's-Hertogenbosch.

The original General Terms and conditions have been drawn up in the Dutch language and filed. The terms and conditions in English/German are only a translation of them.