

## GENERAL TERMS AND CONDITIONS

### BIRD CONTROL

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#### 1. Definitions

- 1.1. In these General Terms and Conditions, the terms listed below have the following meaning:
- a. General Conditions: the terms and conditions as set out below.
  - b. User: one or more of the following parties to the agreement in which these general terms and conditions have been declared applicable: (i) Aero Bird Control Solutions B.V. (Dutch Chamber of Commerce number 56565976), (ii) Offshore Bird Control Solutions B.V. (Dutch Chamber of Commerce number 56565666) and/or Bird Control Systems B.V. (Dutch Chamber of Commerce number 54337712), each a private company with limited liability, having its registered office in Delft, the Netherlands, maintaining a place of business Molengraaffsingel 12, (2629 JD) Delft.
  - c. Customer: any party that enters into or intends to enter into an agreement with the User.
  - d. Quotation: any oral or written offer made by the User to the Customer.
  - e. Agreement: any agreement concluded between the User and the Customer, any amendment or addition to that agreement, and/or any other juridical or other acts performed in the preparation and performance of that agreement.
  - f. Goods: all movable property that the User supplies to the Customer under the Agreement.
  - g. Products: automated and/or manual operated equipment based on lasers and/or light to monitor, analyze and repel birds and other animals;
  - h. Services: services to monitor, analyze and repel birds and other animals and/or assist in monitoring, analyzing and repelling birds and other animals;
  - i. Parties: The User and the Customer.

#### 2. Applicability

- 2.1. These General Conditions govern (i) all Quotations given by User and Agreements (to be) concluded between User and Customer; (ii) deliveries of Goods that are delivered by a third party on behalf of the User; (iii) any further or follow-up agreements between the User and the Customer. The Customer is deemed to have understood and agreed to the above.
- 2.2. The applicability of any terms and conditions of the Customer is expressly rejected.
- 2.3. If the User and the Customer agree to depart from these General Conditions in one or more Agreements, that does not affect the provisions of any previous or subsequent Agreements between the User and the Customer.
- 2.4. If one or more of the provisions of these General Conditions are deemed void in whole or in part, the other provisions of these General Conditions will continue to apply in full force and the Parties will consult in order to agree on an alternative provision that is in keeping with the Parties' intention of the void or provision.

#### 3. Quotations and the conclusion of an Agreement

- 3.1. All Quotations given by the User are subject to contract and are valid for the period stated therein by the User. If the User has not stated a period in its Quotation, the Quotation automatically lapses after 14 calendar days. The User may revoke all Quotations at any time, also if the Quotation states a term for acceptance.
- 3.2. The documents that form part of the Quotation, such as but not limited to pricelists, brochures, catalogues, leaflets, etc., are as accurate as reasonably possible. They are made available to the Customer for information purposes only and cannot bind the User in any manner whatsoever. The documents in question furthermore are and remain the User's (intellectual) property.
- 3.3. An Agreement is concluded only if the Customer accepts the User's Quotation in writing. If the Customer places an order with the User either orally or in writing for the delivery of Goods without that order being preceded by a Quotation, or if both of the Parties have not or not yet signed the Quotation, the Agreement is deemed to have been concluded as of the date of the confirmation of the order in writing by the User or the date the User commences the execution of the order at the Customer's request.

- 3.4. If the Customer accepts a Quotation, the User nevertheless has the right to revoke its Quotation orally or in writing within 7 calendar days after receipt of the acceptance, in which case no Agreement is concluded between the Parties.
- 3.5. If the acceptance of the Quotation includes any conditions and/or changes by the Customer compared with the Quotation that the User has issued, the Agreement is not concluded, contrary to the above provisions, until the User or its authorized representative accepts those conditions and/or changes in writing.

#### **4. Prices**

- 4.1. Unless otherwise stated, the prices in a Quotation are denominated in euro's, are exclusive of VAT, import duties, freight charges, shipping and administrative costs, and other government charges, and are exclusive of any other costs incurred in relation to the Agreement. The User may pass on those charges and costs separately.
- 4.2. The prices of the Goods to be delivered by the User stated in a Quotation or Agreement are based on delivery ex warehouse. This factually means exclusive of costs related to any transport from the User's warehouse to the Customer's address.
- 4.3. The User has the right to change the prices of any Goods not yet delivered and/or paid for if one or more cost factors change(s) after the conclusion of the Agreement in such a way as to directly influence the price of the Goods to be delivered. The User also has the right to immediately adjust prices if a statutory price determining factor so requires. The User will inform the Customer of any such changes to the prices of Goods within a reasonable period. If the Customer is under a periodical payment obligation, the User has the right to adjust the applicable prices and rates subject to a notice period of at least one month. If the changed prices differ more than 15% from the prices originally agreed, the Customer has the right to dissolve the Agreement.
- 4.4. The relevant documents and data in the User's accounting records or systems serve as full evidence of the performances provided by the User and the amounts payable by the Customer for those performances, without prejudice to the Customer's right to provide evidence to the contrary.

#### **5. Performance of an Agreement and delivery**

- 5.1. All delivery periods stated and/or agreed on are based on information and circumstances known to the User at the conclusion of the Agreement. Those delivery periods are always target dates, do not bind the User and are stated for information purposes only, unless the Parties otherwise expressly agree in writing. The User will use its best endeavours to observe the delivery period in question, but the mere exceeding of a delivery period does not constitute a breach of any of the provisions of these General Conditions. Late delivery in no event gives the Customer the right to dissolve the Agreement or to claim damages.
- 5.2. In all cases the User delivers the Goods ex warehouse, as regulated in the ICC Incoterms. All risks for Goods to be delivered by the User pass to the Customer the moment the User delivers the Goods to the Customer or any third party designated by the Customer for this purpose. However, the Goods remain the User's property until the price has been paid in full.
- 5.3. The Customer must take delivery of the Goods the moment they are delivered.
- 5.4. The User has the right to deliver the Goods in parts (partial deliveries), which it may invoice separately. The Customer is required to pay those partial invoices in accordance with these General Conditions.
- 5.5. If the Customer refuses to take delivery of the Goods ordered, the User has the right:
  - a. to deliver the Goods by means of written notice, in which case the User will store the Goods at the User's property or at a third party for the Customer's account and risk, including the risk of loss of quality; or
  - b. to terminate the Agreement in whole or in part and to sell and deliver the Goods to a third party or third parties.
- 5.6. If the User incurs loss, in any form whatsoever, due to the Customer's refusal to take delivery of the Goods ordered, the Customer is liable for that loss and any damages suffered.
- 5.7. The Customer must do everything that may reasonably be expected of it to enable the User to deliver the Goods in time, failing which the User has the right to suspend its obligation to deliver.

## **6. Amendment of the Agreement and additional work**

- 6.1. Without being in breach of the Agreement, the User can refuse a request by Customer to amend the Agreement if that might have consequences in terms of quality and/or quantity, for instance with regard to the work to be performed or Goods to be delivered in that regard.
- 6.2. If the User is required to perform work for the Customer, regardless the reason therefore, that has not been recorded in writing in an Agreement between the Parties, or if costs are incurred due to actions of the Customer in connection with such work, that work and those costs are regarded as additional work and are charged as such. The Customer must pay the costs of such additional work.
- 6.3. The occurrence or performance of additional work or the need to perform additional work during the performance of the Agreement in no event gives the Customer the right to terminate or dissolve the Agreement.

## **7. Retention of title**

- 7.1. All Goods delivered under this Agreement remain property of the User, until the Customer has paid in full all current or future amounts payable to the User for such Goods, within the limits of Section 3:92 of the Dutch Civil Code.
- 7.2. The title to the Goods does not pass to the Customer if and/or because the Customer processes or treats the Goods received from the User, the Goods will remain property of the User until the obligation set out in article 7.1 has been met by the Customer. The Customer merely holds the Goods on behalf of the User.
- 7.3. The Customer must (i) maintain adequate insurance for the Goods delivered but not yet paid for in full; (ii) at the User's request immediately transfer to the User by means of assignment all rights of action that the Customer may have against third parties with regard to the Goods delivered by the User; (iii) inform third parties that the Goods that the User has delivered to the Customer have been delivered by the User to the Customer subject to retention of title if the Customer has not or not yet paid for all or part of those Goods.

## **8. Right of retention**

- 8.1. The User has a right of retention in respect of all Goods that are in the User's possession of or on behalf of the Customer until the Customer performs all its obligations towards the User under this Agreement.
- 8.2. If the Goods referred to in 8.1, that are retained by the User, are destroyed or damaged in whole or in part or if their value decreases without that being due to intent or gross negligence on the part of the User, the Customer cannot claim any damages possibly suffered in connection to those Goods.

## **9. Warranty policy**

- 9.1. The Products are warranted to be free from defects in materials or workmanship for one (1) year from the date of purchase. Within this warranty period, User, at its sole discretion, repair or replace any components that fail in normal use. Such repairs or replacement will be made at no charge for parts and/or labor. Replacement products may be new or refurbished at our discretion. User may also choose to give a refund.
- 9.2. This warranty does not apply to:
  - a. cosmetic damage, such as scratches, nicks, stains and dents;
  - b. consumable parts, such as batteries, unless product damage has occurred due to a defect in materials or workmanship;
  - c. damage caused by accident, abuse, misuse, water (in excess of specifications), flood, fire, or other acts of nature or external causes;
  - d. damage caused by service performed by anyone who is not an authorized reseller;
  - e. damage to a product that has been modified or altered without the prior written permission of Bird Control Group;
  - f. or a product where the serial number has been removed.
- 9.3. The warranties and remedies contained herein are exclusive and in lieu of all other warranties express, implied, or statutory, including and liability arising under any warranty of merchantability or fitness for a particular purpose, statutory or otherwise. Subject to applicable law, in no event shall our liability exceed the purchase price of the products.
- 9.4. If a defect is reported after the warranty period, User can offer an assessment of the defect including quotation for repair or replacement, following the return policy as described in Article 9.5.
- 9.5. Returning products without prior authorization of User is not allowed. For all returns, including warranty and after-warranty returns, Customer must pack the Product in its original packaging and include all accessories and documentation. User reserves the right to charge for any damage to the product, and missing part fees

may apply. Customer must contact the Technical Support Team of User prior to returning any product to receive a return authorization form and RMA (Return Material Authorization) number. Customer will be responsible for, and pre-pay, all return shipping charges and shall assume all risk of loss or damage to product while in transit to User. The RMA number should be clearly marked on the outside of the package. Shipping fees for returns are for the account of Customer. Return shipping instructions and return address will be included in the RMA document provided by User.

## **10. Duty to investigate/complaints**

- 10.1. The Customer must check within 8 calendar days after delivery of the Goods whether their quantity and quality are correct and are in conformity with the Agreement.
- 10.2. If the Customer discovers any defect in the quantity and/or quality of the Goods delivered, the Customer must notify the User of the defect in writing immediately after discovery, but in no event later than 8 calendar days after delivery of the Goods. If the Customer proves that it could not reasonably have discovered the defect within that period (hidden defect), it must notify the User in writing of the defect within 8 calendar days after discovery, or in any event within 8 calendar days after it could reasonably have been discovered.
- 10.3. The written notification referred to in Article 10.2 must contain (i) a detailed description of the defect; (ii) the invoice number and the packing slip related to the delivery, as to enable the User to respond to the claim as adequately as possible.
- 10.4. If a complaint is not reported within the term stated in Article 10.2 and/or does not meet the requirements stated in Article 10.3, the Customer's rights regarding the possible defect lapse by operation of law.
- 10.5. The User will use its best endeavors to assess whether the complaint is valid within 14 calendar days after receiving it.
- 10.6. If a complaint is declared valid, by the User or otherwise, the User may at its discretion either correct the relevant part of the delivery, redeliver the Goods to the Customer, or send the Customer a credit note for the relevant part of the delivery, which is then considered cancelled. If a complaint is declared valid, the Customer is not entitled to any damages or compensation other than that referred to in the preceding sentence and does not have the right to cancel or terminate the Agreement.
- 10.7. The Customer may return Goods to the User only with the User's prior written consent. Return shipments that are not preceded by a complaint and the relevant details regarding the complaint are not permitted. If the Customer returns the Goods contrary to these provisions or without a valid reason, the User can choose to keep those Goods available to the Customer for the Customer's account and risk, insofar as the User does not refuse those Goods. The User then holds those Goods without in any way acknowledging the validity of a claim under warranty or alike on the part of the Customer. The costs of return shipments are payable by the Customer.
- 10.8. Complaints do not release the Customer from its payment obligations.
- 10.9. If for any reason whatsoever the User is in default in the timely and/or correct delivery of confirmed orders, it is not liable for damages unless otherwise agreed in specific cases or unless the Customer proves intent or gross negligence on the part of the User. The Customer is obligated to have and maintain adequate insurance with regard to the foregoing risk.

## **11. Performance and Use**

- 11.1. The User will use its best endeavours to deliver Goods in the same quantity and of the same quality as ordered by the Customer and confirmed by the User.
- 11.2. Statements made by or on behalf of the User regarding the quality, composition, applications, properties in the broadest sense etc. of the Goods delivered are regarded as warranties only if expressly confirmed in writing by the User as such.
- 11.3. If the Customer has used, treated or processed the Goods delivered by the User in whole or in part, or has delivered them to third parties, the User is deemed to have properly performed the Agreement.
- 11.4. Minor differences in quality, colour, size, weight, finishing, design etc. that are considered reasonable by market standards or that cannot be avoided for technical reasons, as well as normal wear and tear of the Goods delivered, in no event constitute a breach under the Agreement on the part of the User.
- 11.5. If the Goods delivered are in conformity with the Agreement but prove to be unsuitable for the purpose for which the Customer wishes to use them, that is at the Customer's risk and does not constitute a breach under the Agreement on the part of the User.
- 11.6. Use of the delivered Goods or Products need to comply with the latest version of the document 'Acceptable Use Policy', to be found at [www.birdcontrolgroup.com/legal](http://www.birdcontrolgroup.com/legal). The Product should only be used in compliance with the user manual.

## **12. Product recall**

- 12.1. In urgent cases – whereby the User will assess whether or not a case is urgent –, in any event including the situation in which the Goods delivered or to be delivered do not meet the statutory requirements, the Customer is required, at the User's first request, to return the Goods already delivered to the User and, if the Customer has already delivered the Goods to third parties, to recall them from the third parties in question.
- 12.2. If the User performs a product recall as stated in Article 12.1, the Customer must take all the measures that the User considers necessary and must comply with all the instructions given by the User regarding the products recall. The Customer must also take all necessary and reasonable measures to limit the loss suffered by it and the User to the maximum extent possible.
- 12.3. If the User decides to perform a product recall, it is only required to repair or replace the Goods or to send the Customer a credit note for the Goods recalled. In the event of a product recall the User is not liable for any loss or damages incurred by the Customer.

## **13. Force majeure**

- 13.1. In these General Conditions force majeure on the grounds of Section 6:75 of the Dutch Civil Code means, in addition to its meaning in legislation and case law, all external causes and their consequences, either foreseen or unforeseen, that are beyond the User's control and as a result of which the User is unable to perform its obligations or such performance is onerous and/or unreasonably costly for the User to such an extent that the User cannot reasonably be required to perform the Agreement. Force majeure in any event includes strikes, extreme weather conditions, epidemics and pandemics, governmental measures, machine breakdowns, machine failures, interruptions in the supply of power, and the User not being provided or not being provided in a timely or proper manner with a performance that is relevant to the performance to be provided by the User itself. The User also has the right to invoke force majeure if the circumstance that prevents performance or further performance of the Agreement occurs after the User should have performed its obligation.
- 13.2. During the event of force majeure, the User has the right to suspend its obligations under the Agreement. If the period of force majeure lasts longer than two months Parties are entitled to terminate the Agreement without being liable for any damages towards the other party.
- 13.3. The User has the right to claim payment in respect of any performance already provided by or on behalf of the User under the Agreement with the Customer before the occurrence of the event of force majeure or any performance of the obligations under the Agreement during the event of force majeure.

## **14. Payment**

- 14.1. Unless otherwise agreed, the Customer must pay any and all amounts owed to the User within 15 calendar days of the invoice date. The value date on the bank statement is decisive and is regarded as the date of payment.
- 14.2. Any discount for prompt payment that the User offers the Customer lapses by operation of law if the Customer fails to pay the invoice within the term stipulated by the User.
- 14.3. If the Customer has any complaints regarding the invoice received, it must inform the User of those complaints in writing within 5 working days after the date of the invoice, failing which the invoice is deemed to be correct.
- 14.4. Complaints regarding the correctness of an invoice or the services provided therefore in no event give the Customer the right to suspend payment or any of its other obligations under the Agreement.
- 14.5. The Customer is in no event entitled to settle or set off any amounts owed by it and/or claims held against it by the User with amounts owed to it and/or claims held by the Customer against the User, irrespective of the fact whether such amounts and/or claims are payable.
- 14.6. If the Customer fails to pay the invoice within the payment term, the Customer is automatically in default without any notice of default being required. The Customer owes contractual interest at a rate of 1% per month or part of a month on the amounts owed and payable to the User, unless the statutory interest or commercial interest is higher, in which case that statutory interest or commercial interest applies. The interest on the amount due is charged from the moment the Customer is in default until the moment of payment of the entire amount due.
- 14.7. All costs incurred by the User in enforcing its rights under the Agreement are payable by the Customer. Contrary to the relevant statutory regulations, the out-of-court costs are set at 15% of the amount in question, subject to a minimum of €200, excluding VAT and include all legal and other professional costs in full. The Customer furthermore owes interest on the collection costs due.

- 14.8. If the User incurs any loss or damages as a result of the Customer's refusal to pay, regardless the reason therefore, the Customer is liable for such loss and/or damages.
- 14.9. Payments by the Customer are first deducted from the costs and interest due (in that order) and then from the principal and interest accrued, whereby older claims have priority over new claims. Without being in default, the User may refuse an offer of payment if the Customer states a different order of allocation of the payment. The User may refuse full repayment of the principal if the default interest, accrued interest and collection costs are not also paid at the same time.

## **15. Contract period and termination**

- 15.1. The User has the right without any judicial intervention to terminate all Agreements concluded between the User and the Customer with immediate effect, without being liable for damages and without prejudice to any of its other rights, if:
- a. the Customer is declared bankrupt or is granted a suspension of payment;
  - b. a petition in bankruptcy or a petition for a suspension of payment is filed against the Customer;
  - c. the Customer offers its creditors a composition;
  - d. the Customer ceases or is about to cease its business;
  - e. any circumstances that have come to the User's attention after conclusion of the Agreement that provide valid reason to fear that the Customer will fail to perform its obligations correctly and/or in time, and/or if in the User's opinion collection of current or future claims cannot be guaranteed;
  - f. the Customer fails to perform any of its obligations under the Agreement or on the basis of applicable law, or to do so in full or in time, after having been given 14 calendar days to cure any such default by the User;
  - g. due to a delay on the part of the Customer the User can no longer be required to perform the Agreement on the conditions originally agreed upon; or
  - h. circumstances occur of such a nature that performance of the Agreement is impossible or the User cannot reasonably be required to continue the Agreement on the conditions originally agreed upon.
- 15.2. On termination of the Agreement all claims that the User has against the Customer will be immediately due and payable and the User is entitled to payment for the work already performed under the Agreement and the costs incurred by it till the moment of termination.
- 15.3. If the Agreement is terminated on the basis of article 15.1, the User is entitled to reimbursement of the loss, including the costs, consequently incurred by it and/or damages suffered.

## **16. Fear of non-performance**

- 16.1. If after conclusion of the Agreement circumstances come to the User's attention providing the User valid reason to fear that the Customer will fail to perform one of its obligations under the Agreement or to do so correctly and/or in time, including bankruptcy or suspension of payment or a pending petition for one of those measures against the Customer, a resolution has been adopted to wind up the Customer or the Customer to enter into a merger, prejudgment attachment or attachment in execution has been or is levied on any part of the Customer's assets, or the Customer fails to perform any of its payment obligation to the User, all of the Customer's payment obligations to the User on any ground whatsoever will be immediately due and payable in full. The User has the right to demand immediate payment of or security for those immediately payable claims.
- 16.2. In such case the User has the right to suspend performance of its obligations under the Agreement until payment has been made in full and/or security has been provided for all its payment obligations. If the User suspends its obligations, it is not under any obligation whatsoever to reimburse the Customer for any resulting loss or costs incurred by him.
- 16.3. The Customer is liable for any resulting loss and/or damages on the part of the User.

## **17. Liability**

- 17.1. If it is established in court or otherwise that the User may be liable towards the Customer for loss incurred in connection to its obligations under the Agreement, that total liability is in any event limited by the following provisions:
- a. the User is in no event liable for any loss incurred because the User based its actions on incorrect information/files provided by the Customer;
  - b. the User will in any event only be liable for direct damages, the User is in no event liable for any indirect damages including, but not limited to loss of profit, lost income, lost turnover, lost savings, or loss caused by business interruption or other interruption;

- c. the User's liability is in any event limited to the amount paid in the case in question by the User's liability insurance;
  - d. if for any reason whatsoever the User's liability insurance does not cover the case at hand, the User's liability, is limited to:
    - the net amount of the invoice for the Goods to which the event relates or, if several invoices relate to the event, the net amount of the last of that series of invoices that the User sent to the Customer before the date of the event; or
    - if the event is not related to the delivery of Goods or if no invoice has been sent in that regard, the net amount of the most recent invoice that the User sent to the Customer before the date of the harmful event; or
    - EUR 20.000, depending on which ever amount is lowest.
- 17.2. User is in no way responsible or liable for damage or costs arising from law or permit requirements in the country of the Customer. All requirements following from regulations relating to the Product are for the account and risk of the Customer.
- 17.3. User will not be liable for damages, of any kind, that is caused by incorrect or incomplete information provided by the Customer. Moreover, User will not be liable if damage is caused by the improper use of the Products, in case of use in violation of the purpose of the Products, or if the Customer or a third party have modified the Product. The Customer indemnifies User against any claims by third parties in these cases.
- 17.4. Any loss for which the User can be held liable must be reported to the User as soon as possible but no later than 15 calendar days after the loss occurs, on pain of forfeiture of the right to claim the loss. This term does not apply if the Customer can prove that the loss could not be reported within the stipulated period for a valid reason.
- 17.5. Any liability claim against the User lapses 12 months after the Customer became or could reasonably have become aware of the event.

## **18. Indemnification**

- 18.1. The Customer is liable for any and all damages, loss, costs and expenses incurred by the User, the companies affiliated with it or third parties that result from or have arisen in connection with any breach in the performance of the Customer under the Agreement, irrespective of whether the loss, damage, costs or other expenses were caused by the Customer, its employees, or any other natural person or legal entity for which the Customer is reasonably responsible.
- 18.2. The Customer fully indemnifies and will keep indemnified the User and its affiliated companies and hold them harmless from and against all third party claims regarding damages, loss, costs and expenses of third parties arising from or related to any breach in the performance of the Agreement by the Customer or other third parties for which the Customer is reasonably responsible, as a result of a any and all claims filed, proceedings instituted or imminent proceedings by those third parties, including but expressly not limited to claims based on infringement of any intellectual property rights related to Goods delivered.
- 18.3. If the User is held liable by third parties, the Customer must assist to the best of its abilities, the User both in proceedings in and out of court and must immediately do any and all things that may be reasonably expected of it in that case and/or requested by the User.
- 18.4. The Customer must take out adequate insurance in order to cover the performance risk referred to above. At the User's first request the Customer must provide evidence that it is adequately insured. The Customer will pay the deductible. If the Customer can claim payment under an insurance agreement with regard to its possible liability towards the User, the Customer must ensure that those payments are made directly to the User. Any payment made to the User under a liability agreement entered into by the Customer is without prejudice to the User's claims for damages against the Customer insofar as they exceed the payment.
- 18.5. The Customer will always make every effort to limit the loss or damages incurred by the User or any third party.
- 18.6. If the Customer fails to take adequate measures, including insurance, the User has the right, without any notice of default, to do so itself. All resulting costs and loss on the part of the User and third parties are entirely for the Customer's account and risk.

## **19. Intellectual and industrial property rights**

- 19.1. Without the User's prior written consent, the Customer and his legal successors may not use the User's name or trademarks, or any words, pictures or symbols that in the User's opinion may imply the User's involvement in or approval of any written or oral advertisement or performance, logbook, plan, advice, brochure, newsletter, book or other published material.

- 19.2. The delivery of the Goods by the User to the Customer under the Agreement expressly does not constitute a transfer of any intellectual or industrial property right by the User to Customer. All works that the User makes available to the Customer under the Agreement remain the User's property. The Customer may use those works only for and with regard to the performance of the Agreement, within the limits of the Agreement, and may not in any manner reproduce or publish those works, make them available to third parties in whole or in part, or use them in any other manner without the User's express prior written consent.
- 19.3. All intellectual and industrial property rights, including but not limited to trademarks, copyrights, design rights and database rights, trade name rights and patents that have been used or that will be used in the performance of the Agreement and/or have been included in the Goods and/or in advice, including but not limited to products, production processes, applications, drafts, designs, drawings, inventions, models, techniques, works, procedures, results, creations, presentations, computer programs, know how, data collections and other knowledge, are vested exclusively in the User, unless otherwise agreed.
- 19.4. The Customer hereby transfers to the User, or will do so at User's first request, the copyright as well as all other intellectual and industrial property rights, including database rights and user's rights in relation to copies, translations, adaptations, adjustments or works that the Customer has developed for the User, as well as rights to all the rest that the Customer has made for the execution of the Agreement, such as any software programmes, patent applications, research, website contents and design, software applications and the related documentation and files. This transfer is hereby accepted by the User respectively will be accepted by the User.
- 19.5. The User is not permitted to remove or change any reference to copyrights, trademarks, trade names or other intellectual and industrial property rights regarding the Goods delivered by the User or the related materials.
- 19.6. During the term and 24 months after termination of the Agreement the Customer and his legal successors shall not directly or indirectly:
- be involved in development and/or manufacturing of Goods and/or Products that compete with the Goods and/or Products in any manner and that are marketed by the User anywhere in the world.
  - market, offer, sell and/or distribute any Goods and/or Products and/or Services that compete with the Goods and/or Products and/or Services in any manner and that are marketed by the User anywhere in the world.
  - establish and/or operate a business that is identical, similar or related to that of the User in any form whatsoever and may not have any financial interests in such a business, in any form whatsoever, or take an active part in such a business, in any manner whatsoever, whether or not in exchange for compensation.
- 19.7. The Customer will always fully respect all intellectual and industrial property rights of the User.

## **20. Confidentiality/non-disclosure**

- 20.1. The Customer must observe confidentiality with regard to information, regardless the medium used, provided by the User under the Agreement, that the Customer knows or could reasonably assume to be confidential.
- 20.2. Both during the Agreement and after its termination the Customer must treat all the information that it has received from the User for the performance of the Agreement as confidential and may not disclose that information to any third party, unless such disclosure is necessary for the performance of the Agreement and in that case always with the User's prior written consent, and may not use such information for any purposes other than the performance of that Agreement. The Customer will also impose this obligation on its employees and on any third parties that it engages in the performance of the Agreement.

## **21. Penalty**

- 21.1. If the Customer violates the prohibitions of Article 19 and/or 20 of these General Conditions, it forfeits to the User, without any notice of default being required, for each violation a penalty payable immediately, not subject to litigation, of €50,000 (in words: fifty thousand euro's) per violation and an amount of €3,000 (in words: three thousand euro's) for each day or part of a day the Customer's violation continues, without prejudice to the User's right to separately claim reimbursement of loss or damages and/or performance of the Agreement.

## **22. Transfer of rights and obligations**

- 22.1. The Customer does not have the right to sell and/or transfer its rights and/or obligations under the Agreement, including intellectual property rights, to a third party or to sublicense, encumber or pledge

such rights or obligations.

- 22.2. The User has the right to sell and/or transfer its rights and/or obligations under the Agreement to a third party and/or to transfer its entitlement to payment of any amounts to a third party without the Customer's priorwritten consent.

**23. Governing law and disputes**

- 23.1. The Agreement, these General Conditions and any disputes or claims arising out of or in connection with the Agreement or these General Conditions are governed by the law of The Netherlands exclusively, the applicability of the Vienna Sales Convention 1980 (CISG) is expressly excluded.
- 23.2. Any disputes arising in relation to an Agreement (including disputes regarding the existence and validity of an Agreement) will be settled by the competent court of The Hague, the Netherlands, The Hague location, unless mandatory rules of law provide otherwise. The User nevertheless has the right to present the dispute to the court that has jurisdiction by law.