



Terms And Conditions Of Delivery of IM AMSTERDAM BV, Amsterdam, the Netherlands

The general Terms and Conditions laid down are applicable to all offers of and agreements concluded or to be concluded with IM Amsterdam BV. IM Amsterdam BV, also acting under the tradename IM International (hereinafter "IM"), especially wishes to point to Articles 4 (retention of title), 5 (liability), 8 (processing instructions) and 10 (applicable law and dispute resolutions) of these general Terms and Conditions.

1. General provisions

- 1.1 These Terms and Conditions will apply to all offers of and agreements concluded by IM Amsterdam BV, hereinafter referred to IM, and another party.
- 1.2 Any oral offers or commitments will only bind IM after and to the extent that such have been confirmed in writing by it. All offers of IM, in whatever way such have been made, will be free of obligation unless provisions to the contrary have been laid down in writing.
- 1.3 An agreement must be deemed to have been concluded after IM has confirmed a written order placed by the other party, or has commenced the execution of the order.
- 1.4 In the event that an agreement is concluded by email by either IM or the other party, or in the event that an agreement is concluded through another means of electronic communication, such email message or statement made through another means of electronic communication must be deemed to be equal to a written statement and the principle will apply, without prejudice to the provisions laid down in Article 1.3, that an agreement may be concluded without IM having to fulfil any conditions provided by law pertaining to electronic communication.
- 1.5 IM will be entitled to adjust prices agreed upon before delivery in the event of increases in the cost-determining factors such as fluctuations in the exchange rates, raw materials, labour costs or in the event of government measures, provided that such increases or measures have occurred after the conclusion of the agreement but before delivery.
- 1.6 Any and all images and specifications of goods in catalogues, price lists, advertisements, etc. must be deemed to be representations by approximation only, unless IM has explicitly indicated the contrary in writing with regard to a specific delivery.
- 1.7 IM does not vouch for the correctness or accurateness of the specifications pertaining to weight, measurements, capacity, etc. of the goods delivered or to be delivered, unless IM has explicitly agreed upon provisions to the contrary in writing in connection with a specific delivery. A deviation with respect to measurements of 3% or less may under no circumstances be deemed to be a failure on the part of IM.
- 1.8 The other party is aware of the fact that some products to be delivered by IM can be natural, or handmade products. Any deviations in the good delivered in comparison to samples provided related to the nature of the relevant natural product such as colour, stitching etc. though not restricted to, stains, gnarls, differences in structure, etc., will not be deemed to be failures on the part of IM.
- 1.9 IM will be entitled at all times to effect adjustments in the goods to be delivered, in order to improve such or to comply with government regulations.
- 1.10 The other party will only be entitled to cancel an order after receiving written consent from IM. In the event of full or partial cancellation of an agreement by the other party, IM will be entitled to compensation of 30% -advance payment- of the total order amount, unless provisions to the contrary have been agreed upon by the parties.
- 1.11 IM will be entitled to charge the costs of any packaging separately. The packaging will not be taken back. Should IM, however, be obliged by law or any regulations to take packaging back, any costs related to such taking back or processing of such packaging will be borne by the other party.
- 1.12 All amounts are exclusive of VAT.
- 1.13 All e-mails sent by IM will be considered as written notices.
- 1.14 In the event that IM has provided the other party with a translation of these general Terms and Conditions, the Dutch text will always be decisive in the event of a dispute pertaining to the contents of these general Terms and Conditions.
- 1.15 If any provision of these Terms and Conditions is held to be unenforceable, illegal or invalid in whole or in part, the rest of these Terms and Conditions shall remain in full force and effect.

2. Delivery

- 2.1 Unless provisions to the contrary have been agreed upon, delivery will be effected DDP Customers Warehouse. The goods will be for the risk of the other party from the moment of delivery, or from the moment upon which the goods to be delivered have been surrendered to a haulier by IM for shipment to the other party, also in the event that the title of the goods has not yet passed to the other party. The other party will be obliged to accept delivery of the goods upon first request from IM.
- 2.2 In the event that IM in addition to –or in deviation of – the provisions laid down above arranges for the transport and/or export of the goods for the other party, the costs thereof will be borne by the other party.
- 2.3 In the event that IM assists in any manner in the loading of the goods, such assistance - and the manner of loading - will be for the risk of the other party.
- 2.4 Any delivery times quoted by IM may never be considered to be firm deadlines, unless provisions to the contrary have been explicitly agreed upon in writing and IM's management board has granted its consent. In the event of late or inaccurate delivery, IM must be declared to be in default, in writing by the other party, after which IM will be granted a reasonable term of at least fourteen (14) working days to fulfil its obligations as yet. In the event that such extended term is exceeded, the other party will only be entitled to dissolve the agreement to the extent that no deliveries have been effected yet. In such event, IM will not be liable to pay damages, unless such damage is the consequence of an intentional act or intentional omission or of gross negligence on the part of IM or its management.
- 2.5 IM will be entitled to deliver the goods sold in parts.

3. Payment

- 3.1 Unless provisions to the contrary have been agreed upon, the other party will pay the entire purchase price, or the remainder thereof in the event of advance payment, 50% at the moment of confirmation of the order, 50% at the moment of delivery- at the discretion of IM immediately upon delivery of the goods or within fourteen (14) days after the invoice date, by transfer to or deposit into an account indicated by IM, without any deduction, discount or set-off. Any complaints of the other party will not suspend its obligation to pay.



- 3.2 In the event that the other party has not paid an amount owed by it within fourteen (14) days after the invoice date, it will be in default by operation of law and all claims of IM will immediately become fully due and payable. In such event, IM will also be entitled to compensation of the statutory interest (as such applies with respect to trade agreements) plus two percent with respect to the outstanding amount until the date of full payment.
- 3.3 In the event of untimely payment, IM will furthermore be entitled to compensation of all extra-judicial costs, which latter costs will amount to at least 15% of the total payable amount, subject to a minimum of EUR 500.
- 3.4 IM will be entitled to require that the other party effect advance payment of an amount to be determined at IM's discretion before it commences the execution of an order or commission.
- 3.5 In the event that IM is fully or largely successful in legal proceedings to which the other party is a party, the other party will be obliged to compensate all costs incurred by IM in connection with such proceedings, also to the extent that such costs exceed the cost award made by the court. This clause may be invoked by IM irrespective of whether the other party has appealed the relevant judgement, either at the court of appeal or at the Supreme Court.

4. Retention of title

- 4.1 IM retains title to the goods delivered and to be delivered to the other party until full payment of all purchase amounts has been received, as well as any amounts owed by the other party pertaining to work performed by IM in connection with such purchase agreements and any claims pursuant to any attributable failure in the performance of such agreements on the part of the other party.
- 4.2 As long as the right of ownership of the goods delivered has not passed to the other party, it may not pledge the rights to such goods, transfer the ownership of such goods or grant any right to such to any third parties.
- 4.3 The other party will be obliged to store the goods delivered under retention of title with due care and recognizable as the property of IM. In addition, it will be obliged to insure such goods against fire and water damage and theft. Any claims of the other party pursuant to such insurance policies will be pledged by the other party to IM upon first request from IM, as additional security with respect to the claims of IM vis-à-vis the other party.
- 4.4 In the event that the other party fails in the performance of any obligation vis-à-vis IM, or in the event that IM has good reason to fear that the other party will fail in the performance of its obligations, IM will be entitled to recover the goods delivered under retention of title or to have such recovered. In such events, IM will also be entitled to disassemble the goods – to the extent that such can be disassembled without inflicting any notable damage- or to have such disassembled. The other party shall extend its cooperation therein. The costs of the recovery or disassembly will be borne by the other party, without prejudice to IM's right to further damages.

5. Liability

- 5.1 IM does not accept any liability towards any party other than recorded in these Terms and Conditions.
- 5.2 Any liability on the part of IM on the basis of an attributable failure will be restricted to the provisions laid down in Article 5 and 7.3.
- 5.3 The total liability of IM for losses or damages will in any event never exceed the amount of thirty percent (30 %) of the total ordered amount.
- 5.4 IM is not liable with respect to damages or losses as a consequence of or related to any errors or omissions in advice rendered by IM, nor will it accept any liability with respect to damages or losses as a consequence of or related to errors or omissions in the processing instructions recommended by IM.
- 5.5 IM is not liable for losses or damages as a consequence of the fact that the other party has not acted according to IM's processing instructions.
- 5.6 IM is not liable– irrespective of the legal basis of the other party's claim –for any damages and losses which could not have been foreseen by IM. The losses or damages include but are not confined to loss of income, turnover, profits, costs, interests, penalty's forfeited by the other party, goods or the use of goods by the other party or any other third party.
- 5.7 The above-mentioned restrictions with respect to liability will not apply in the event that the damages are a consequence of an intentional act or intentional omission or of gross negligence on the part of IM its employees or its management or in the event of death or personal injuries as a consequence of negligence of IM, its employees or its management.
- 5.8 The other party will indemnify IM against any claims of third parties in connection with goods supplied by IM.

6. Force Majeure

- 6.1 In the event that IM has not failed attributable in the performance of its obligations (force majeure), it will not be liable. To the extent that the circumstance making performance impossible is not yet of a permanent nature, its obligations will be suspended. In the event that the period during which performance is not possible due to force majeure lasts longer than two months or is expected to last longer than two months, both parties will be entitled to cancel the agreement, without any obligation to pay damages arising in such event.
- 6.2 In the event that IM has already partially fulfilled its obligations upon the occurrence of the situation of force majeure, or is only able to fulfil its obligations in part, it will be entitled to invoice the part already supplied or the part that can still be supplied separately and the other party will be obliged to pay such invoice as if such pertained to a separate agreement.
- 6.3 A situation of force majeure within the meaning of this article must be deemed to have occurred on the part of IM in the event of, inter alia, strikes, a shortage of materials for which IM cannot be blamed, a delay, transport problems, war or threat of war, full or partial mobilization, riots, sabotage, floods, weather influences, fire or other forms of destruction within IM's company, lockouts and industrial actions, breakdowns of machines or tools or other breakdowns within IM's company and all causes in general that are outside IM's control. A situation of force majeure must also be deemed to have occurred on the part of IM in the event that one or more of the above-mentioned circumstances occurs within the companies of IM's suppliers and IM cannot or could not perform its obligations, or cannot or could not perform such in good time, as a consequence, if IM's supplier is in default in any way what so ever with regard to IM or if IM's supplier has not delivered the order to IM/the other party in accordance with the specifications of IM's order confirmation to supplier with regard to the order involved.

7. Complaints and inspection

- 7.1 The goods delivered must be checked by or for the other party upon delivery with respect to numbers and visible defects and any shortages or visible defects must be reported to IM immediately after delivery. The other party must report defects not visible upon delivery within 48 hours after their discovery, though in any event within 48 hours after the time that the other party should reasonably have discovered such. The possibility of submitting a complaint will lapse in the event that the relevant defect can be attributed to the other party.



- 7.2 The other party will be obliged to perform the inspection with due care or to have such inspection performed with due care, be it by the haulier engaged or not. The other party will bear the risk for inspecting the goods by means of random checks and may not rely on the fact that a defect that was visible and could have been discovered upon delivery was not observed by it because it – or a third party engaged by it – did not inspect the entire shipment.
- 7.3 In the event of a complaint on good grounds, IM will only be obliged – at its own discretion – to repair the defect, to replace the relevant good or to credit or pay back the amount charged in connection with defective good in whole or in part, according to its own reasonable judgment. However, it will not be obliged to do so in the event that the other party is not entitled to claim such in view of standards of fairness and reasonableness. As long as IM has not accepted the complaint, the obligation to pay remains intact.
- 7.4 Any and all claims for payment of an amount of money and/or repair of the relevant good and/or replacement of the good and/or supply of any missing part, on whatever basis, as well as any right to dissolve the agreement will lapse at the earliest of the following times: a) upon late reporting pursuant to Article 7.1 or b) 3 months after the date of delivery.

8. Processing instructions

- 8.1 Unless IM has indicated otherwise in writing, the principle will apply that the processing and storage of the goods supplied by it must be effected at a temperature of approximately 18 degrees centigrade and at a humidity between 45% and 65%. In the event that this processing instruction is not observed, changes may occur in the size and structure of the goods which may make the goods unsuitable for their intended use. The goods delivered must be stored properly and in spaces which meet the above-mentioned specifications with respect to temperature and humidity.
- 8.2 In the event that the goods to be delivered have specific qualities, the other party shall only use such material in processing as are in accordance with these qualities and will not use any materials which may have a negative effect on the result intended with respect to the qualities of the goods supplied. Upon the processing of goods, the other party must take into account that if it processes the goods, it must take additional measures to ensure that the intended qualities are not (fully) rendered ineffective. IM will provide further instructions in this connection upon first request to that effect.
- 8.3 The other party will see to it that the processing instructions laid down in this article are observed by its employees and, in the event of resale, will oblige its contracting parties to observe the processing instructions. The other party will also inform any third parties that may process the goods of the processing instructions.
- 8.4 In the event that IM – or a company affiliated with it – is held liable in connection with defects, real or alleged, in the products sold or produced by it and such claims are related to the non-performance by the other party of one or more obligations ensuing from this article, or in connection with non-performance of such obligations by parties contracted by the other party, the other party will be obliged to compensate IM – or the relevant company affiliated with IM – for all corresponding costs and damage.
- 8.5 In the event that the other party sells goods supplied by IM on to third parties, the other party will see to it that those goods meet all requirements and guidelines, which apply with respect to the goods pursuant to the applicable laws and regulations of the country of destination. In the event that the other party provides its contracting parties with information pertaining to specific qualities of the goods sold or provides other information on the goods, it must ensure that the information is not contrary to – or is incorrect or incomplete in view of – any rules or guidelines applicable in the country of destination. The other party shall indemnify IM and the companies affiliated against any and all claims of third parties in connection with any failure to comply with the provisions laid down in this paragraph.

9. Suspension and dissolution

Without prejudice to the rights of IM pursuant to the law, the principle applies that in the event that the other party fails to perform any of its obligations vis-à-vis IM, or IM fears that the other party will not perform its obligations and the other party is not able to provide adequate security for the performance of its obligations upon first request from IM, IM will be entitled to suspend (further) performance of any agreements concluded with the other party, or to dissolve such agreements in whole or in part. These rights and powers will in any event also be vested in IM in any of the following events:

- a) if the other party changes the legal form of its enterprise,
- b) if there is a change in the control over the company of the other party,
- c) if property of the other party is attached,
- d) if the other party files for suspension of payments,
- e) if it is declared bankrupt (or when a petition for bankruptcy has been filed)
- f) if it loses the disposal of its assets,
- g) if its company is wound up, or
- h) if he/she dies or,
- i) in the event that the other party is a company, if it is dissolved.

Any right of the other party to suspend performance is hereby excluded.

10. Applicable law and dispute resolution

10.1 All agreements will be governed by Dutch law.

10.2 In the event that the other party is domiciled in a member state of the European Union at the time that proceedings are commenced, any and all disputes will be settled by the competent court in Amsterdam, the Netherlands. The above will not affect IM's power to submit a dispute to the court that would be competent in the absence of this provision.

In the event that the other party is not domiciled in a member state of the European Union upon the commencement of proceedings, dispute resolution will be effected in accordance with the rules of the Netherlands Arbitration Institute (Nederlands Arbitrage Instituut, or NAI). This arbitration will take place in Amsterdam, the Netherlands, will be submitted to three arbitrators and will be conducted in Dutch.