

# PREMIUM INC

HOUSE OF BRANDS

**General terms and conditions of Premium Inc. B.V. with office in Rotterdam the Netherlands. Filed at the Chamber of Commerce in Rotterdam no: 09155930**

## **Art. 1 - Definitions**

- 1.1. In the present general terms and conditions, the following terms are used in the sense given below, unless explicitly indicated otherwise. User: Premium Inc. B.V. as the user of the general terms and conditions. Buyer: the user's contract party. Agreement: the sales agreement between the user and buyer.

## **Art. 2 - General**

- 2.1. The stipulations of the present terms and conditions shall exclusively apply to each and every offer and agreement between user and a buyer. Deviation of these general conditions is only possible in the written form, whereby the user is represented by an authorized signatory.
- 2.2. The present terms and conditions shall also apply to all agreements with user, in case the execution of such agreement requires the services of third parties.
- 2.3. The buyer's general terms and conditions shall only apply if parties have explicitly agreed in writing that said general terms and conditions shall apply to the present agreement with the exclusion of user's general terms and conditions. For the avoidance of doubt a reference to and in the buyers' general conditions is as such not accepted by user. In that event possibly still conflicting stipulations in the user's and buyer's general terms and conditions, the stipulation in the user's general terms and conditions supersedes.
- 2.4. Should one or more provisions of these conditions be null and void or be found to be voidable, this shall not affect the legal force of the other provisions of the general terms and conditions. In that case, the user and the buyer will confer regarding new provisions to replace the null and void or annulled provisions, remaining as faithful as possible to the purpose and tenor of the null and void or annulled provision.

## **Art. 3 - Offers and Tenders**

- 3.1. All offers shall be free of obligation unless the offer contains an acceptance term.
- 3.2. The offers made by user shall be free of obligation particularly as regards the period of performance and prices. Even in case a fixed period for acceptance of the offer has been given by user, user is entitled to revoke the offer.
- 3.3. Terms of delivery given in user's offers shall only be tentative and exceeding these terms of delivery shall not entitle buyer to dissolution or damages, unless explicitly agreed otherwise in writing.
- 3.4. The prices given in above-mentioned offers and tenders shall be exclusive of VAT and other government levies, as well as of shipment costs and possible packaging and administration costs, unless explicitly stated otherwise.
- 3.5. If the acceptance deviates (on secondary items) from the offer given, user shall not be bound by it. The agreement shall in such event not be concluded in accordance with said deviating acceptance, unless user indicates otherwise in writing.
- 3.6. A compound quotation shall not oblige user to execute part of the assignment against a corresponding part of the given quotation.
- 3.7. Offers and tenders shall not apply automatically to repeat orders.

## **Art. 4 - Execution of the Agreement**

- 4.1. User shall execute the agreement to the best of his knowledge and ability.
- 4.2. The buyer shall see to it that user shall be provided in due time with all data which user has said to be necessary or which the buyer must in all reasonableness understand to be necessary to the execution of the agreement.



If user has not been provided in due time with the data necessary to the execution of the agreement, user shall have the right to suspend the execution of the agreement and / or to charge the buyer for the additional costs resulting from the delay at the generally accepted rates.

- 4.3. User shall not be liable for damage of whatever nature caused by the fact that user worked on the basis of incorrect and / or incomplete data provided by the buyer. This comes fully for the account and risk of buyer.
- 4.4. If user or third parties engaged by user within the scope of the assignment perform work at buyer's premises or at a premises designated by buyer, buyer shall provide the employees having to work there free of charge with all facilities desired in all reasonableness by said employees.
- 4.5. Buyer shall safeguard user and shall indemnify and hold the latter harmless against possible claims filed by third parties who may sustain damage attributable to buyer in connection with the execution of the agreement.

#### **Art. 5 - Delivery**

- 5.1. Delivery shall be made on basis of the in the agreement agreed "Incoterms", currently 2000. The latter refers to the most recent version of the Incoterms, as issued by the international Chamber of Commerce, which is valid at the moment the agreement is concluded. If there is no specific reference in the agreement between user and buyer regarding the applicable delivery, the Incoterm Ex Works (EXW) is applicable on the agreement.
- 5.2. Buyer shall be held to take delivery of the goods the moment that user delivers them to him or has them delivered, or the moment at which the goods are put at buyer's disposal under the conditions and stipulations of the agreed applicable Incoterms.
- 5.3. If the buyer refuses to take delivery or fails to give the information or instructions necessary to the delivery, user shall be entitled to store the goods at buyer's risk and expense at a place fully at the discretion of user, whereby the user has deemed to have delivered the goods to buyer in accordance with the agreement.
- 5.4. If, in the framework of the execution of the agreement, user requires data (e.g. in relation to the delivery address) to be given by the buyer, the term of delivery given by indication only shall commence after the buyer has provided user with said data.
- 5.5. If, in the framework of the execution of the agreement, the disposal of a Letter of Credit was agreed, the term of delivery – which is at all times only indicative - shall commence after the buyer has provided user with said Letter of Credit, or any other form of equally valid financial security.
- 5.6. If user has given a term of delivery, it shall only be indicative. A given term of delivery shall therefore never constitute a term to be observed on penalty of forfeiture of rights. If an indicative term is exceeded, the buyer must give user notice of default in writing and user shall do its best to give an estimated delivery term, which shall again be indicative.
- 5.7. User shall be entitled to deliver the goods in parts, unless such is deviated from in writing in the agreement or if the partial delivery does not represent an independent value. User shall be entitled to invoice the thus delivered goods separately.

#### **Art. 6 - Samples and Models**

- 6.1. If a sample or model has been given by user to buyer, then the sample has been given by way of indication only, unless parties agree explicitly in writing in the agreement that the product to be delivered shall correspond exactly with it.

#### **Art. 7 - Inspection & Complaints**

- 7.1. Buyer shall be held to examine the delivered goods in order to have the delivered goods inspected the moment of delivery (handing over), but in any case – if the latter is in all reasonableness not possible – within 24 hours after delivery. In this respect, buyer must examine whether the quantity of the delivered goods comply with what was agreed upon, and whether they meet the agreed requirements.
- 7.2. Possible visible shortcomings to the goods must be communicated in writing to user within three days following



delivery. Non-visible shortcomings must be reported within three weeks following their detection but not later than 12 months following delivery.

- 7.3. If in accordance with the previous paragraph, buyer files his complaint in due time, he shall still be held to take delivery and effect payment of the goods purchased. If buyer wishes to return defect goods, he shall do so only following prior consent in writing from user.

#### **Art. 8 - Remuneration, Price and Costs**

- 8.1. If user and buyer have agreed upon an administered price, user shall nevertheless be entitled to increase said price, if the increase of the price is less than 10%.
- 8.2. User shall be allowed among others, to charge on price increases if changes in price have occurred between the moment the offer was made and the moment of execution of the agreement with respect to, e.g., exchange rates, salaries and wages, raw material, semi-finished products or packaging material.
- 8.3. The prices given by user shall be exclusive of VAT and other government levies, as well as of the other expenses to be possibly made within the scope of the agreement, including shipment and administration costs, unless stated otherwise.

#### **Art. 9 - Changes to the agreement**

- 9.1. If it is shown during the execution of the agreement it needs to be changed and / or supplemented in order to ensure its proper execution, parties shall adapt – if possible, such in the end to be decided solely by user - the agreement accordingly in due time in writing.
- 9.2. If user accepts that the agreement needs to be changed and / or supplemented, this decision may influence the time of completion of the execution. User shall inform the buyer thereof to its best ability as soon as possible.
- 9.3. Should the change and / or supplement to the agreement have any financial and / or qualitative consequences, user shall inform buyer thereof in advance.
- 9.4. If a fixed rate has been agreed upon then user shall indicate the degree to which the change or supplement to the agreement will result in an increase of said fixed rate.

#### **Art. 10 - Payment**

- 10.1. Unless otherwise explicitly agreed in writing, payment must be made within 30 days from the date of invoice, in a way to be indicated by user and in the currency in which the goods were invoiced, which is normally in Euro. Contestation of the amount of the invoices shall not suspend the fulfillment of the payment obligation. Buyer is not entitled to any sort of compensation, e.g. with a(n) (alleged) counterclaim towards user.
- 10.2. If buyer fails to fulfill his payment obligation within the term of 30 days, then buyer shall be in default by operation of law. In that event, buyer shall owe the then applicable statutory interest for trade transactions rate over the due amount. The interest on the amount due and payable shall be calculated as from the day the buyer is in default until the moment he has paid the amount in full.
- 10.3. User's claims against buyer shall become due on demand in the event that buyer is wound up, attached, declared bankrupt, or if a suspension of payment is granted.
- 10.4. User shall be entitled to have the payments made by the buyer go first of all to reduce the costs, subsequently to reduce the interest still due and finally to reduce the principal sum and the current interest. User shall have the right, without this leading user to be in default, to refuse an offer for payment, if the buyer designates a different sequence of attribution.

User shall be entitled to refuse full payment of the principal sum, if said payment does not include the interest still due, the current interest and the costs.

- 10.5. User has the possibility to charge a credit limitation surcharge, which shall be specified in the invoice of user. This surcharge will not be charged if payment is made within 7 days from the date of invoice.
- 10.6. In any case the user will remain the owner of the delivered goods until buyer has paid all charges (invoices) that are related to that particular delivery. Charges can be the invoice for the delivered goods, and the related charges for non payment.



- 10.7. If, either prior to or during the performance of an agreement user receives clear indications of the buyer's inadequate or diminished creditworthiness, user shall have the right not to perform or not to perform further unless, at its demand and to its satisfaction, the buyer effects advance payment of the amount due, or security has been furnished for the proper payment of the price due, regardless of whether this would be in cash or whether any other period has been set for performance of the agreement.
- In the latter case, user may, on pain of the price for the portion of the agreement(s) already performed being immediately due and payable and the cessation of any further performance of the agreement(s), also demand the provision of security for the period between such performance and payment.
- 10.8 Buyer is allowed in a situation as described in article 10.7 to approach Premium and advise the latter that it wishes to cancel the agreement with Premium. In that situation it is solely up to Premium to co-operate with such a request to cancellation of Buyer, whereby Premium shall charge Buyer with a compensation for losses suffered by Premium in the amount of 25% of the purchase price of the agreement, immediately due and payable by Buyer.

#### **Art. 11 - Retention of Title**

- 11.1. All goods delivered by user, possibly also including designs, sketches, drawings, films, software, (electronic) files, etc., shall remain user's property under all agreements concluded with user until buyer has fulfilled his obligations, amongst which future obligations or claims, towards user, whereby designs, sketches, drawings, films, software, (electronic) files, etc. remain in principle at all times owned by user, unless agreed differently in writing.
- 11.2. Buyer shall not be authorized to pledge or encumber in any way the goods falling under retention of title. Furthermore, buyer has to keep the goods delivered under retention of title clearly visible and separate from other stock and marked as goods of user.
- 11.3. If third parties seize goods delivered subject to retention of title or wish to establish or assert a right to them, buyer shall be held to inform these parties as well as user thereof as soon as can reasonably be expected.
- 11.4. The buyer shall undertake to insure the goods delivered subject to retention of title and to keep them insured against damage caused by fire, explosion and water as well as against theft and make this insurance policy available for inspection on first demand of user.
- 11.5. Goods delivered by user falling under the retention of title by virtue of the stipulations under 1. of the present article, may only be sold on within the framework of normal business activities and must never be used as instrument of payment.
- 11.6. In the event that user wishes to exercise his ownership rights mentioned in the present article, buyer shall give user or third parties to be appointed by user, now for then, unconditional and irrevocable permission to access all sites and locations where user's property might be found and to take these goods back.

#### **Art. 12 - Guarantee**

- 12.1. User shall guarantee that the goods to be delivered shall meet the usual Dutch requirements and standards that can be set for and made upon them.
- 12.2. The guarantee mentioned under 1 shall equally apply if the goods to be delivered are destined for use abroad and if the buyer explicitly informed user of this use in writing the moment the agreement was entered into.
- 12.3. The guarantee mentioned under 1 shall be valid for a period of 3 months following delivery.
- 12.4. If the good to be delivered does not comply with said guarantee, user shall, at his discretion, replace or see to the repair of the good, within a reasonable period of time following receipt thereof, or, if the good cannot be returned in reason, following notification of the defect by the buyer. In the event the good is replaced, the buyer shall already now undertake to return the replaced good to user and to transfer ownership to user.
- 12.5. The guarantee mentioned for this purpose shall not apply when the defect originated as the result of injudicious or improper use or when the buyer or third parties have introduced changes or tried to introduce changes to the good without user's consent in writing or if they have used it for purposes for which the good was not intended.
- 12.6. If the guarantee given by user concerns a good produced by a third party, the guarantee shall be limited to the guarantee given by the producer of the good.



**Art. 13 - Collection Charges**

- 13.1. If the buyer fails to fulfill his obligations (in due time) or defaults on them, then all reasonable costs incurred to have all extrajudicial costs and debts paid shall be borne by the buyer. If the buyer remains in default of payment within the set time period, he forfeits an immediately payable fine of 15% on the amount due at that moment. This with a minimum of EUR 100.
- 13.2. If user demonstrates that he has incurred higher expenses than the ones mentioned in 1, which were necessary in reason, said expenses shall also qualify for reimbursement.
- 13.3. The reasonable judicial and execution costs possibly incurred shall equally be borne by buyer.
- 13.4. Buyer shall owe the applicable legal (trade) interest over the made collection charges.

**Art. 14 - Suspension and Dissolution**

- 14.1. User shall be authorized to suspend the fulfillment of the obligations under the agreement or to dissolve the agreement, in the event that:
- buyer does not fulfill or does not fully fulfill his obligations resulting from the agreement
  - after the agreement has been concluded, user learns of circumstances giving good ground to fear that the buyer will not fulfill his obligations. If good ground exists to fear that the buyer will only partially or improperly fulfil his obligations, suspension shall only be allowed in so far the shortcoming justifies such action.
  - buyer was asked to furnish security to guarantee the fulfillment of his obligations resulting from the agreement when the contract was concluded and that this security is not provided or insufficient. As soon as security is furnished, authorization to suspend shall lapse, unless said fulfillment has been unreasonably delayed because of it.
- 14.2. User shall furthermore be authorised to dissolve the agreement (have the agreement dissolved) if circumstances arise of such a nature that fulfillment of the obligations becomes impossible or can no longer be demanded in accordance with the requirements of reasonableness and fairness, or if other circumstances arise of such a nature that the unaltered maintenance of the agreement can no longer be demanded in all reasonableness.
- 14.3. If the agreement is dissolved, the user's claims against the buyer shall be forthwith due and payable. If user suspends fulfillment of his obligations, he shall retain his rights under the law and the agreement.
- 14.4. User shall always retain the right to claim damages from buyer, which Premium can set for its convenience's sake at 25% of the purchase price of the agreement.

**Art. 15 - Liability**

- 15.1. If the goods delivered by user are defective, user's liability vis á vis the buyer shall be limited to the arrangements made in the present terms and conditions under "Guarantee" in article 12 and at all times limited to direct damage for the buyer.
- 15.2. Any liability of user under these terms and conditions is at all times limited to the amount user's insurance policy covers for the relevant event. In case that insurance policy does not supply any cover, and user is liable under the applicable legislation, user's liability is at all times maximized to the amount of the related order between user and buyer. User is at all times also entitled to redeliver the defective goods at her choice if that is possible for user, instead of compensate buyer as mentioned under this article.
- 15.3. Direct damage shall be understood to be exclusively:
- the reasonable costs incurred to establish the cause and the volume of the damage, in so far said establishment relates to damage in the sense of the present terms and conditions
  - the reasonable costs possibly incurred to have user's faulty performance meet the conditions of the agreement, unless such faulty performance cannot be attributed to user;
  - the reasonable costs incurred to prevent or limit the damage, in so far buyer demonstrates that said costs have led to the limitation of direct damage as meant in the present general terms and conditions.
- 15.4. User shall never be liable for indirect damage, including consequential damage, loss of profit, lost savings and damage due to business stagnation.



- 15.5. The limitations of liability for direct damage contained in the present terms and conditions shall not apply if the damage is due to intentional act or omission or gross negligence on the part of user or his subordinates.

#### **Art 16 - Transfer of Risk**

- 16.1. The risk of loss of, or damage to the goods being the subject of the agreement shall be transferred to buyer the moment said goods are judicially and / or actually delivered to buyer and therefore fall into the power of buyer or of third parties to be appointed by buyer in case the delivery was not made under the conditions and stipulations of the applicable agreed Incoterm
- 16.2. In case Incoterms are applicable the transfer of risk will be according conditions and stipulations of the applicable agreed Incoterm.

#### **Art. 17 - Force Majeure**

- 17.1. Parties shall not be held to fulfill any of their obligations if they are hindered to do so due to a circumstance through no fault of their own and which cannot be attributed to them by virtue of law, a legal action or generally accepted practice.
- 17.2. In addition to the provisions of the law and the judge-made law in this respect, force majeure shall in the present general terms and conditions furthermore be understood to be any external circumstance, be it envisaged or not, on which user cannot have any influence but which prevents user from fulfilling his obligations. Industrial action at user's company, governmental and or monetary actions and blocks shall also be understood to be a circumstance of force majeure.
- 17.3. User shall also be entitled to invoke force majeure if the circumstance rendering (further) fulfillment of the obligation(s) impossible, commences after the point in time on which user should have fulfilled his obligation.
- 17.4. Throughout the duration of the circumstances of force majeure, parties shall be entitled to suspend the fulfillment of their obligations. If this period lasts for more than two months, either of the parties shall be entitled to dissolve the agreement without any obligation to pay the opposite party damages.
- 17.5. Insofar user has already partially fulfilled his obligations resulting from the agreement at the moment the circumstance of force majeure commenced or shall be able to fulfill them and insofar separate value can be attributed to the part already fulfilled or still to be fulfilled respectively, user shall be entitled to invoice the part already fulfilled or still to be fulfilled respectively. The buyer shall be held to pay this invoice as if it were a separate agreement.

#### **Art. 18 - Safeguarding**

- 18.1. The buyer shall safeguard user against claims filed by third parties concerning intellectual property rights on material or data provided by the buyer, which shall be used for and during the execution of the agreement.
- 18.2. If the buyer provides user with information carriers, electronic files or software etcetera, the former shall guarantee that said information carriers, electronic files or software are free of viruses and defects.

#### **Art. 19 - Intellectual Property and Copyrights**

- 19.1. Without prejudice to the other stipulations of the present general terms and conditions, user shall reserve the rights and authorities to which user is entitled under the Dutch Copyright Act.
- 19.2. The buyer shall not be allowed to introduce changes to the goods and material provided unless agreed upon otherwise in writing.
- 19.3. The designs, sketches, drawings, films, software and other material or (electronic) files, possibly produced by the user within the framework of the agreement, shall remain user's property, irrespective of the fact whether they have been handed over to the buyer or to third parties, unless agreed upon otherwise in writing.
- 19.4. All documents, such as designs, sketches, drawings, films, software, (electronic) files, etc., provided by user, shall be destined to be used under an agreement by buyer exclusively and must not be reproduced, made public or brought to the notice of third parties by buyer without prior consent from user, unless the nature of the documents provided dictates otherwise.
- 19.5. User shall reserve the right to use the knowledge gained due to the execution of the work for other purposes, in so



far no confidential information shall be brought to the notice of third parties when doing so.

#### **Art. 20 - Secrecy**

- 21.1. Both parties shall be bound to secrecy of all confidential information they have received within the scope of their agreement from each other or from another source. Information shall be considered to be confidential if the other party has indicated so or if the confidential character results from the nature of the information.
- 20.2. If a statutory provision or a judicial decision compels user to convey confidential information to third parties designated by law or by the court and user cannot for that purpose invoke a legal right to refuse to give evidence or such a right acknowledged or allowed by the competent court, user shall not be held to pay damages or compensation and the opposite party shall not be entitled to demand the dissolution of the agreement on the ground of any damage resulting from said circumstance.

#### **Art. 21 - Non-employment of user's personnel**

- 22.1 Throughout the duration of the agreement and for one year following termination thereof, buyer shall not in any way, hire or employ in any other way, be it directly or indirectly, staff of user or of enterprises whom user has engaged to execute the present agreement and who are (were) involved in the execution of the agreement, without prior proper businesslike consultation on this matter, all this in accordance with the requirements of reasonableness and fairness.

#### **Art. 22 - Disputes**

- 22.1. The Court in user's place of business shall have exclusive jurisdiction to hear actions, unless the District Court is the competent Court. User shall nevertheless be entitled to submit the dispute to the Court deemed competent by law.
- 22.2. Parties shall only refer the matter to the court if they have done their utmost to solve the dispute in mutual consultations.

#### **Art. 23 - Applicable Law**

- 23.1. Dutch law shall apply to each and every agreement between user and the buyer. The Vienna Sales Convention shall be explicitly excluded.

#### **Art. 24 - Changes to Terms and Conditions, interpretation and their location**

- 24.1. The Dutch version of these general terms and conditions prevails at all time in case of disputes with regard to the interpretation and purpose of these terms and conditions.
- 24.2. The most recently filed version shall always apply, or, as the case may be, the version valid at the time the agreement was concluded.

Rotterdam, 10 June 2013

