



**GENERAL TERMS AND CONDITIONS FOR DELIVERY  
TO NON-CONSUMERS**

OF:

*Transparent Sound*  
P.o Box 331  
3760 AH Soest  
The Netherlands

Hereinafter to be referred to as: user

**Article 1 Definitions**

1. In the present general terms and conditions, the following terms are used in the sense given below, unless explicitly indicated otherwise.

User: the user of the general terms and conditions.

Buyer: the user's opposite party, acting in the course of a business or in the course of a profession.

Agreement: the agreement between the user and buyer.

**Article 2 General**

1. The stipulations of the present terms and conditions shall apply to each and every offer and agreement between user and a buyer, to which user has declared the present terms and conditions applicable, insofar as parties have not explicitly deviated from the present terms and conditions in writing.

2. The present terms and conditions shall also apply to all agreements with user, the execution of which calls for the services of third parties.

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 the present general terms and conditions. In that event possibly still conflicting stipulations in the user's and buyer's general terms and conditions shall only apply between parties, if and in so far that they are a part of user's general terms and conditions.

4. If one or more stipulations in the present general terms and conditions should be null and void or declared null and void, then the other stipulations of the present general terms and conditions shall remain fully applicable. The case ensuing, user and buyer shall enter into negotiations to agree upon new stipulations replacing the null and void conditions, or, as the case may be, the conditions declared null and void, whereby the purpose and the meaning of the original conditions shall be heeded as far as possible.

**Article 3 Offers and Tenders**

1. All offers shall be free of obligation unless the offer contains an acceptance term.

2. The offers made by user shall be free of obligation; they shall be valid for a period of

thirty days, unless indicated otherwise. User shall only be bound by the offers if the acceptance thereof is confirmed in writing by the buyer within thirty days.

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 upon otherwise.

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.

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.

6. A compound quotation shall not oblige user to execute part of the assignment against a corresponding part of the given quotation.

7. Offers and tenders shall not apply automatically to repeat orders.

#### **Article 4 Execution of the Agreement**

1. User shall execute the agreement to the best of his knowledge and ability and in compliance with the demands of proper craftsmanship, all this on the basis of the state of science as known then.

2. If and in so far required for the proper execution of the agreement, user shall have the right to have certain work done by third parties.

3. 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. 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, unless user should have been aware of said incorrectness or incompleteness.

5. If parties have agreed that the agreement will be executed in stages, user can suspend the execution of the parts belonging to a following stage until the buyer has approved in writing the results of the stage prior to it.

6. If user or third parties engaged by user within the scope of the assignment do work at buyer's site or at a site 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.

7. Buyer shall safeguard user against possible claims filed by third parties who may sustain damage attributable to buyer in connection with the execution of the agreement.

#### **Article 5 Delivery**

1. Delivery shall be made ex works/store/warehouse of user.
2. If delivery is made on the basis of the "Incoterms", the "Incoterms" valid at the moment the agreement is concluded, shall apply.
3. 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 agreement.
4. 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.
5. If the goods are serviced, user shall be entitled to charge possible service charges. Said service charges shall then be invoiced separately.
6. If, in the framework of the execution of the agreement, user requires data to be given by the buyer, the term of delivery shall commence after the buyer has provided user with said data
7. 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 a term is exceeded, the buyer must give user notice of default in writing.
8. 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.
9. If execution of the agreement in stages has been agreed upon, user can suspend the execution of the parts belonging to a following stage until the buyer has approved in writing the results of the stage prior to it.

#### **Article 6 Samples and Models**

1. If a sample or model has been given to buyer, then the assumption is that such has been given by way of indication only, unless parties agree explicitly that the product to be delivered shall correspond with it.
2. In the event of purchase of immovable property, the surface area or other measurements and indications given shall also be assumed to be merely indicative without any obligation to have the product to be delivered correspond with it.

#### **Article 7 Inspection & Complaints**

1. Buyer shall be held to examine the delivered goods (to have the delivered goods inspected) the moment of delivery (handing over), but in any case in as short a period of time as possible. In this respect, buyer must examine whether the quality and the quantity of the delivered goods comply with what was agreed upon, or at least whether they meet the requirements applying to said goods in normal (business) transactions.
2. Possible visible shortcomings 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 no later than 12 months following delivery.

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 following prior consent in writing from user.

#### **Article 8 Remuneration, Price and Costs**

1. If user and buyer have agreed upon an administered price, user shall nevertheless be entitled to increase said price in the events listed herein below.

2. User shall be allowed to charge on price increases if user can demonstrate that significant changes in price 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.

3. Buyer shall be entitled to dissolve the agreement if the price increase amounts to more than 10%, unless said price increase is the result of a change to the agreement or arises from a competent authority pursuant to the law.

4. 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.

#### **Article 9 Changes to the agreement**

1. If it is shown during the execution of the agreement that the work to be done needs to be changed and / or supplemented in order to ensure its proper execution, parties shall adapt the agreement accordingly in due time and in mutual consultations.

2. If parties agree 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 as soon as possible.

3. Should the change and / or supplement to the agreement have any financial and / or qualitative consequences, user shall inform buyer thereof in advance.

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.

5. Contrary to the conditions governing this matter, user shall not be able to charge additional costs if the change or supplement is the result of circumstances attributable to user.

#### **Article 10 Payment**

1. Payment must be made within 14 days from the date of invoice, in a way to be indicated by user and in the currency in which the goods were invoiced. Contestation of the amount of the invoices shall not suspend the fulfilment of the payment obligation

2. If buyer fails to fulfil his payment obligation within the term of 14 days, then buyer shall be in default by operation of law. In that event, buyer shall owe an interest of 1% per month, unless the statutory interest rate is higher, in which case the statutory interest

rate shall apply. 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.

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.

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.

5. If payment is made within 7 days from the date of invoice, user shall not add a surcharge.

6. If payment is made after more than 7 days, buyer shall owe user a surcharge of 2%, unless parties agree otherwise in writing.

#### **Article 11 Retention of Title**

1. All goods delivered by user, possibly also including designs, sketches, drawings, films, software, (electronic) files, etc., shall remain user's property until buyer has fulfilled all of his obligations under all agreements concluded with user.

2. Buyer shall not be authorised to pledge or encumber in any way the goods falling under the retention of title.

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 user thereof as soon as can reasonably be expected.

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.

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.

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.

#### **Article 12 Guarantee**

1. User shall guarantee that the goods to be delivered shall meet the usual requirements and standards that can be set for and made upon them and that they shall be free of any defect whatsoever.

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.

3. The guarantee mentioned under 1 shall be valid for a period of 3 / 6 / 12 months following delivery.

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.

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.

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.

### **Article 13 Collection Charges**

1. If the buyer fails to fulfil his obligations (in due time) or defaults on them, then all reasonable costs incurred to have all extra judicial costs and debts paid shall be borne by the buyer. The buyer shall in any case owe the collection charges in the event of a monetary claim. The collection charges shall be calculated in accordance with the collection rates advised by the Nederlandse Orde van Advocaten (Netherlands Bar) for collection procedures.

2. If user demonstrates that he has incurred higher expenses, which were necessary in reason, said expenses shall also qualify for reimbursement.

3. The reasonable judicial and execution costs possibly incurred shall equally be borne by buyer.

### **Article 14 Suspensions and Dissolution**

1. User shall be authorised to suspend the fulfilment of the obligations under the agreement, in the event that:

- buyer does not fulfil or does not fully fulfil 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 fulfil 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 fulfilment 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, the authorisation to suspend shall lapse, unless said fulfilment has been unreasonably delayed because of it.

2. User shall furthermore be authorised to dissolve the agreement (have the agreement

dissolved) if circumstances arise of such a nature that fulfilment 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.

3. If the agreement is dissolved, the user's claims against the buyer shall be forthwith due and payable. If user suspends fulfilment of his obligations, he shall retain his rights under the law and the agreement.

4. User shall always retain the right to claim damages.

#### **Article 15 Return of Goods Put at Buyer's Disposal**

1. If user has put goods at buyer's disposal during and in connection with the execution of the agreement, buyer shall be held to return the delivered goods within 14 days in their original state, free of defects and in their entirety. If buyer fails to fulfil this obligation, all resulting costs shall be at buyer's expense.

2. If, for any reason whatsoever, buyer still remains in default to fulfil the obligation mentioned under 1. after being warned to do so, user shall be entitled to recover the resulting damage and costs, including replacement costs, from buyer.

#### **Article 16 Liability**

1. If the goods delivered by user are defective, user's liability vis à vis the buyer shall be limited to the arrangements made in the present terms and conditions under "Guarantee"..

2. If user is liable for direct damage, then said liability shall be limited to a maximum equalling the amount of the payment to be made by user's insurer, at any rate up to a maximum of twice the amount of the statement of expenses, at any rate that part of the agreement to which the liability relates. User's liability for direct damage shall at all times be limited to a maximum of € ..... (In words: Euro .....).

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.

4. User shall never be liable for indirect damage, including consequential damage, loss of profit, lost savings and damage due to business stagnation.

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

### **Article 17 Transfer of Risk**

1. The risk of loss of, or damage to the products being the subject of the agreement, shall be transferred to buyer the moment said products 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

### **Article 18 Force Majeure**

1. Parties shall not be held to fulfil 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.

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 shall also be understood to be a circumstance of force majeure.

3. User shall also be entitled to invoke force majeure if the circumstance rendering (further) fulfilment of the obligation(s) impossible, commences after the point in time on which user should have fulfilled his obligation.

4. Throughout the duration of the circumstances of force majeure, parties shall be entitled to suspend the fulfilment 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.

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 fulfil 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.

### **Article 19 Safeguarding**

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.

2. If the buyer provides user with information carriers, electronic files or software etc., the former shall guarantee that said information carriers, electronic files or software are free of viruses and defects.

### **Article 20 Intellectual Property and Copyrights**

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 Copyright Act.

2. The buyer shall not be allowed to introduce changes to the goods and material

provided, unless the nature of the delivered goods and material dictates otherwise or if agreed upon otherwise in writing.

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.

4. All documents, such as designs, sketches, drawings, films, software, (electronic) files, etc., provided by user, shall be destined to be used 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.

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.

#### **Article 21 Secrecy**

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.

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.

#### **Article 22 Non-employment of the opposite party's personnel**

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.

#### **Article 23 Disputes**

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 the law.

2. Parties shall only refer the matter to the court if they have done their utmost to solve the dispute in mutual consultations.

#### **Article 24 Applicable Law**

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

## **Article 25 Changes to the Terms and Conditions and their Location**

1. The present terms and conditions have been filed at the office of the Chamber of Commerce and Industry in Hilversum, number 32081906

The most recently filed version shall always apply, or, as the case may be, the version valid at the time the agreement was concluded.