# General Terms and Conditions of Sale and Delivery of The Design Department B.V.

**1.      Applicability**
1.1      These terms and conditions shall apply to any and all offers and contracts between The Design Department B.V. ("TDD") and a buyer ("the Buyer"). The parties hereby exclude the applicability of any general terms and conditions of the Buyer.
1.2      Deviations from these conditions shall only be valid if and in so far as expressly agreed upon in writing between the parties.
1.3      The invalidity of any provisions of these conditions shall not affect the validity of the other provisions. The parties hereby agree to replace any invalid provision with a new, valid one that has the same function and operates in a similar manner to the invalid provision. The conditions laid down in this paragraph shall be applicable in the event of partial invalidity of any provision.

**2.      Tenders**
2.1      All offers from TDD shall be free of obligation, unless stipulated otherwise.

**3.      Price and payment**
3.1      All prices shall be exclusive of turnover tax (VAT) and, unless otherwise agreed upon, exclude the costs of transport, insurance, etc.
3.2      TDD shall at any time be authorised to pass on price increases resulting from changes in its cost price. If the price increase totals more than 5% of the tendered amount, the Buyer shall be entitled to dissolve the contract.
3.3      The entire purchase price shall be paid by the Buyer and received by TDD within the period and/or on the date agreed upon. The Buyer shall not apply any discounts or set-offs.
3.4      In the event of default of full payment within the term and/or by the date agreed upon, the Buyer shall be in default and payment shall become immediately exigible. The buyer shall owe interest equal to the statutory rate of interest plus two per cent annually on the outstanding amount from the moment the sum due became exigible to the moment of full payment.
3.5      In the event of default on payment, TDD shall – at its own discretion – be entitled to entirely or partially suspend deliveries, make deliveries on condition of prepayment or COD, or dissolve the contract.
3.6      If necessary, the Buyer shall be required to provide an irrevocable bank guarantee forthwith (within twenty-four hours) equal to the exigible sum to be paid to TDD.

**4.      Delivery time/date**
4.1      Delivery times and/or dates agreed upon shall be deemed targets and not deadlines. A delivery time agreed upon shall come into effect on the date on which TDD confirms the order.
4.2      In the event that the delivery time and/or date is exceeded, TDD shall under no circumstances be obligated to pay damages.
4.3      In the instance referred to in 4.2, the Buyer shall be entitled to dissolve the contract after giving TDD written notice of default and granting at least four weeks' grace for contract fulfilment.

**5.      Risk**
5.1      The risk associated with the goods shall be transferred to the Buyer upon delivery.
5.2      The goods shall be deemed delivered the moment the first transport vehicle is loaded.
5.3      TDD shall be entitled to make partial deliveries and invoice accordingly.
5.4      TDD shall not be obligated to hold goods in the event of overdue acceptance of delivery. If, nonetheless, TDD holds the goods on behalf of the Buyer, this shall be deemed a service, for which the Buyer shall assume all risks and financial obligations.
5.5      TDD shall be entitled to deliver goods with a maximum of 10% variation in the amount ordered.

**6.      Defects and complaints**
6.1      The Buyer shall (have a third party) inspect the goods delivered upon receipt or as quickly as possible after receipt. In doing so, the Buyer should determine whether the delivered goods meet the contractual provisions including:
- whether the appropriate goods have been delivered;
- whether the appropriate quantity has been delivered;
- whether the goods meet any specifications agreed upon or the requirements for normal use and/or commercial purposes.
6.2      The Buyer shall report apparent defects in writing to TDD within fourteen days of receipt of goods.
6.3      The Buyer shall report hidden defects in writing to TDD within fourteen days of their detection or the point in time at which their existence could reasonably have been discovered, yet at least within six months of receipt of goods.
6.4      TDD shall not be held liable for apparent defects in goods that have been altered since the time of delivery, nor shall TDD be held liable for slight deviations in quality, dimensions, colour, design or report length, weight or finish, even in cases of samplebased sales.
6.5      TDD shall only accept return shipments for which it has given express written permission.
6.6      TDD shall, irrespective of its contractual or statutory liability, only be obligated to perform – at its discretion – the following for goods delivered:
a.      cost-free repair of the delivered goods;
b.      taking back (all or a portion of) the delivered goods and supplying sufficient quantities of goods free of charge that meet the contractual provisions;

c.      taking back (all or a portion of) the delivered goods and (entirely or partially) dissolving the contract, from which the Buyer shall derive no rights for compensation;
d.      payment of a sum that shall under no circumstances exceed the contractual price for the goods delivered referred to in 3.1.

**7.      Liability**
7.1      Irrespective of its liability, TDD shall only be held liable for direct loss and never for loss of profit or indirect loss following instances of non-fulfilment, overdue or improper fulfilment. TDD's liability shall be limited to the contractual price, referred to in 3.1, of goods in relation to which TDD is liable.
7.2      TDD shall not be held liable for loss resulting from:
- natural wear and tear, or improper or incorrect use;
- use for a purpose other than that for which the goods were developed or sold;
- violation of third-party rights, including rights governing industrial property.
7.3      The Buyer shall indemnify TDD against third-party claims related to the contract and/or its fulfilment.

**8.      Force majeure**
8.1      TDD shall be entitled to dissolve the contract if proper fulfilment is entirely or partially impossible due to one or more (temporary or permanent) conditions, beyond TDD's control, including those listed in the following paragraph.
8.2      Conditions that are in any event beyond the control of TDD: conduct, barring gross negligence or wilful intent, of individuals engaged by TDD in the fulfilment of contracts, strike, lockouts, illness, import, export or transport bans, transport problems, nonfulfilment by suppliers, disruptions in production, natural and/or nuclear disasters, and war and/or the threat of war.

**9.      Reservation of title**
9.1      TDD shall reserve the title to all goods delivered and to be delivered until the Buyer has met all its obligations set forth in the contracts of sale concluded with TDD, including:
- consideration(s) for the goods delivered or to be delivered;
- consideration(s) for any services provided or to be provided by TDD under the contract(s) of sale;
- any claims from the Buyer on account of non-fulfilment of one or more of the contracts of sale.
9.2      The Buyer may only resell goods for which goods TDD reserves title within the scope of normal business operations.
9.3      The Buyer undertakes to pledge to TDD – at the latter's request and in the manner stipulated by law – any claims it acquires vis-à-vis its client pursuant to the resale of goods that TDD delivered subject to a reservation of title.
9.4      The Buyer shall be required to store the goods delivered by TDD subject to a reservation of title with the necessary care and to visibly label the goods as the property of TDD.
9.5      If the Buyer does not fulfil its obligations or if TDD has reason to believe that the Buyer will not fulfil its obligation, TDD shall be entitled to (have a third-party) remove the goods delivered for which it reserves title. The Buyer shall co-operate in this. In exercising this right to remove goods, TDD shall credit the Buyer for the market value of the goods on the day the goods applicable are taken back.

**10.      Default**
10.1      The Buyer is in default in cases of non-fulfilment, overdue or improper fulfilment of one or more of its obligations, as well as in cases of attachment under the Buyer, insolvency or (submission of petition for a) moratorium of payments or bankruptcy on the part of the Buyer.
10.2      Without prejudice to the provisions set forth in 3.4 and 3.5, TDD shall be entitled, in cases of default, to immediately dissolve the contract of sale. TDD may stipulate conditions for its willingness to not dissolve the contract immediately. Dissolution of the contract shall render the obligations of the Buyer immediately exigible.
10.3      In the event of default, TDD may claim compensation from the Buyer for any damage it incurs, including loss of profit.
10.4      If, in cases of default, TDD takes extrajudicial measures to assert its rights, the costs thereof shall be borne by the Buyer. These costs shall amount to no less than 15% of the total sum claimed by TDD.

**11.      Reservation of designs**
11.1      Reservation of design, whether or not in combination with a certain colour composition and/or base carrier, shall only mean that, during the period for which the reservation is applicable, TDD will not sell finished goods that use the design or reserved combination to any other client within the sales territory or market sector to which the reservation applies.

**12.      Applicable law and competent court**
12.1      The contract, its fulfilment and the interpretation of these terms and conditions shall be governed by Netherlands law.
12.2      Any disputes that may arise in relation to the contract and/or its fulfilment shall be brought before the competent court of Amersfoort, without prejudice to TDD's right to bring the dispute before another competent court.