

# General terms and conditions of sale

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## 1 General

- 1.1** With effect from 1st of May 2019, these terms and conditions apply to all proposals, quotations, agreements, supplies and performances of work of Nederlandse Kunststoffenchemie B.V., a private limited liability company located in Deventer, listed in the Commercial Register of the Chamber of Commerce under number 38018040 (hereinafter referred to as "NKC") to, with or for clients and/or buyers, hereinafter jointly referred to as "Customer(s)".
- 1.2** These terms and conditions apply to the exclusion of and prevail over terms and conditions of Customers or of third parties that Customers notify NKC of and declare applicable, whether or not by referring to the place of filing.
- 1.3** NKC has the right to amend these terms and conditions. The Customer is deemed to have accepted each amendment to these terms and conditions if it has not notified NKC of its objections In Writing (in these terms and conditions "In Writing"/"Written" means in writing, by e-mail, via the website of NKC or through other electronic means agreed between NKC and the Customer by which messages are stored and can be made legible within a reasonable period of time) within seven days after Written notification of the amendments by NKC.
- 1.4** If these terms and conditions have been translated into a language other than Dutch, the Dutch text will take precedence in case of differences.
- 1.5** If a further Written cooperation agreement has been concluded with NKC in respect of the sale and supply of products by NKC and the cooperation agreement contains provisions that are contrary to these general terms and conditions, the provisions of the cooperation agreement will prevail.
- 1.6** References to Dutch legal concepts are always deemed to have the meaning that Dutch legislation or regulations assign(s) thereto in Dutch, unless the contrary is explicitly shown. References to Dutch legal concepts with respect to any other legal system are deemed to refer to a concept that approaches the Dutch legal concept as closely as possible within that legal system.

### NKC BV

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## 2 Proposals, formation of agreements

Proposals and quotations on the part of NKC, whether made in oral or Written form, are without obligation. Agreements to supply goods and/or to perform work by NKC are formed:

- by the Written order confirmation on the part of NKC or
- by carrying out the requested supply and/or work by NKC.

## 3 Content of the agreement

In case NKC has shown samples or provided examples, this is deemed to have only taken place for indicative and/or illustrative purposes and there is no obligation for NKC to ensure that the goods to be supplied or the work to be performed comply with the sample and/or example.

An exception to this is if NKC expressly undertakes to supply in conformity with a sample and/or example in a Written order confirmation or Written cooperation agreement.

If the agreement is formed by means of a Written order confirmation on the part of NKC, the content thereof is only determined by the description in that order confirmation, replacing all of the parties' prior oral agreements and statements to the contrary or prior oral supplementary agreements and statements, unless a Written cooperation agreement underlies the Written order confirmation, in which case the Written cooperation agreement also further determines the content of the agreement.

NKC is under no obligation to supply goods or perform work in accordance with a specific formula or a specific instruction from the Customer and is free to decide on the composition of goods and work method, unless NKC has expressly undertaken the obligation to do so in a Written order confirmation or Written cooperation agreement.

If supply of goods and/or performance of work has been agreed on the basis of a specified size, weight or any other number, a 10% tolerance applies. Deviations that fall within the scope of this tolerance are not considered defects. The parties can expand the circumstances under which deviations do not constitute defects by means of, inter alia, a Written cooperation agreement.

## 4 Delivery

**4.1** The supply or performance date agreed or stated by NKC is only a target date and is not a strict deadline, unless NKC expressly accepts, in a Written order confirmation, the obligation to supply or perform no earlier or later than a specific date or space of time. If the target date is exceeded NKC does not end up in default, so that any exceeding of the target date does not give the Customer the right to terminate any agreement with NKC or the right to compensation by NKC for the damage suffered by it or third parties as a result thereof. The Customer indemnifies NKC against claims by third parties in that respect.

**4.2** Delivery takes place by delivery of goods or delivery of the work at the agreed place. After delivery the risk of the goods involved therein is the Customer's risk.

- 4.3** NKC is free to select the manner of transport and/or packaging of the goods to be delivered, provided that it is sound and customary for the goods in question. An exception to this is if NKC expressly undertakes to use specific packaging or a specific manner of transport in a Written order confirmation or Written cooperation agreement.
- 4.4** If delivery is offered by NKC but cannot be carried out due to a cause related to or within the responsibility of the Customer, or the Customer refuses delivery, following the first offer the risk of the goods in question will pass to the Customer and NKC can claim payment. NKC will keep the goods available for the Customer, at the Customer's expense. NKC has the right to terminate the agreement without further notice of default by means of a single Written statement to that end, if the Customer does not take delivery within a period of 10 days after NKC has demanded In Writing that it do so. NKC will subsequently be entitled to reimbursement of the storage costs and the other damage that results from the fact that the agreement was terminated.

## 5 Retention of title

NKC will remain the owner of the delivered goods until the Customer has fully satisfied all claims of NKC with respect to all goods supplied or to be supplied and/or services provided or to be provided to the Customer, as well as any claim of NKC on account of a failure to perform by the Customer, all this within the meaning of Article 92 paragraph 2 of Book 3 of the Dutch Civil Code.

While the ownership rests with NKC, the Customer may use and use up the goods for and in the ordinary course of its business. Alienating or encumbering the goods is not permitted.

## 6 Payment

Payment by the Customer takes place on an invoice basis, within 30 days of an invoice's date, unless otherwise agreed. The payment term is a strict deadline. NKC has the right to demand cash payment or security if the Customer's financial position warrants this, in spite of prior agreements to the contrary, irrespective of whether those were specified in the order confirmation. The Customer is obliged to pay irrespective of complaints or claims under the guarantee as referred to below in articles 9 and 10 and the Customer cannot claim any deduction, discount, compensation, suspension or setoff.

If the payment term is exceeded, the Customer will be in default without any notice of default being necessary and will, from the date of default onwards, owe interest on the outstanding amount in the amount of 1% per month, with a part of a month being considered a whole month. In that case the Customer will also be obliged to reimburse the extrajudicial collection costs, i.e. 15% of the outstanding amount, inclusive of VAT with a minimum of € 500.00.

## 7 Prices

**7.1** All prices and quotations are exclusive of VAT, unless otherwise indicated. The amount specified in NKC's order confirmation or, if no order confirmation is given, the amount specified on the invoice is considered the agreed price. NKC has the right to increase the agreed price by a 2% late payment surcharge, which surcharge may be deducted in case of payment within the term set therefor. The price concerns delivery carriage paid on the place agreed therefor, except

- a) in case expressly determined otherwise in a Written order confirmation or
- b) in case of an agreement with an invoice amount that is less than € 1,100.00 exclusive of VAT or
- c) in case it concerns supply of sand.

In cases (b) and (c) freight costs will be charged separately.

**7.2** NKC has the right to fully or partly charge the Customer for cost price increases that occurred after the agreement was formed - including taxes on the delivery - and to increase the agreed price accordingly.

## 8 Suspension, pledge

If and as long as the Customer is in default in respect of the payment of any claim of NKC, NKC has the right to suspend the further supply of goods or performance of work until the Customer has complied with all of its payment obligations. In that case NKC has the right and is hereby authorised irrevocably by the Customer to carry out further legal and other acts required to establish a right of pledge (expressly including confirming and/or establishing the right of pledge by public deed or by registered private deed) in respect of claims or goods of the Customer and to also act on the Customer's behalf in doing so. For that case the Customer grants NKC a right of pledge and the right of retention in respect of all goods of the Customer or of third parties that NKC has in its possession for or in connection with the supply of goods or the performance of work for that Customer, as security for the payment by the Customer of all of its payment obligations towards NKC.

## 9 Acceptance, complaint concerning externally visible defects

**9.1** The Customer is obliged to take delivery of the goods to be supplied and/or work to be performed, without prejudice to its rights pursuant to this article and article 10. The Customer must check supplied goods and performed work for externally visible defects. NKC must be notified of complaints in that respect immediately after discovery though in any case within eight working days after delivery, In Writing and stating the reasons for the complaint. If no complaint is submitted within the term set above, the goods and work are deemed to comply with the agreement as far as the externally visible aspects are concerned and any right and any legal claim of the Customer on account of non-conformity in that respect lapses, irrespective of whether or not NKC was aware of the deviation and irrespective of whether or not it concerns a promised property.

**9.2** The Customer is obliged to send the goods in respect of which, in the opinion of NKC, a justified complaint was made back to NKC, after NKC has requested this and at its expense. In case of a complaint about a defect that has been found to be justified as referred to in this article, NKC is only obliged to add what is missing or to replace or remedy the imperfection, all this at the discretion of NKC. The Customer has no other or more far-reaching rights or claims vis-à-vis NKC in that respect.

**9.3** Without prejudice to the provisions in the previous paragraphs of this article, the Customer will submit a complaint in good time as specified in the transport conditions in case of delivery by means of transport by third parties.

## 10 Guarantee, liability

**10.1** In case goods are supplied or work is performed in connection with which NKC has undertaken to produce/perform in accordance with a specific formula or instructions on the part of the Customer, NKC guarantees that the composition of the goods or the manner of performance of the work is as agreed.

In that case NKC does not guarantee the suitability to whichever degree of supplied goods or performed work for any use or any purpose intended by the Customer, irrespective of whether or not NKC is aware thereof.

**10.2** NKC guarantees the soundness of supplied goods with respect to the properties and in case of application as specified in the product information belonging to the goods on the part of NKC and subject to the provisions, conditions and instructions - including those concerning the expiry date - contained therein.

The above only applies in case of use/application by a professional user or installer.

**10.3** NKC does not provide a further or different guarantee than specified above in this article, except if and in so far as a Written order confirmation or Written cooperation agreement provides otherwise.

**10.4** The Customer no longer has rights pursuant to paragraphs 1 and 2 of this article or on account of other failures to perform on the part of NKC and each liability of NKC in that respect ends after three years have passed since delivery of the goods or work in question, unless the deviation, unsuitability or defect becomes manifest and the Customer submitted a Written complaint in that respect to NKC prior to the end of the above-mentioned period.

The above in this paragraph 4 applies except if and in so far as a Written order confirmation expressly provides otherwise or Written cooperation agreement provides otherwise.

**10.5** NKC must be informed of claims pursuant to paragraphs 1 and 2 of this article immediately after discovery, In Writing and stating the reasons for the claim, at the risk of forfeiting the claims.

In case of claims of the Customer that have been found to be justified pursuant to the provisions above in this article, NKC is only obliged to add what is missing or to replace or remedy imperfections - the latter at the discretion of NKC - at no cost to the Customer.

- 10.6** Without prejudice to the provisions above in this article, NKC is not liable towards the Customer or third parties **(I)** on account of defect, irrespective of whether NKC was aware of the non-conformity and/or it concerns a promised property, **(II)** for damage - including indirect or consequential damage - that has arisen for the Customer or third parties as a consequence of supply of goods or performance of work by NKC or **(III)** for claims that are related in any way to such supply or performance, unless the damage is the consequence of intent or deliberate recklessness on the part of NKC.

If the exclusion of the liability in the previous sentence does not stand up to scrutiny, the compensation will be limited to, at most, the invoice amount of the agreement (exclusive of VAT) from which the liability arises, or at any rate to that part of the invoice to which the liability pertains.

The compensation of the damage will in any case be limited to the amount that NKC's liability insurance pays in specific cases, plus the amount of the excess that pursuant to the applicable insurance contract is to be paid by NKC in the case in question.

The Customer indemnifies NKC against claims by third parties against NKC as set out above under **(I)** up to and including **(III)**.

## **11 Exclusion of liability in case of flawed application**

NKC is not liable and is not obliged to carry out any performance towards the Customer or third parties pursuant to articles 9 and 10 above

- in case of application of supplied goods or performed work contrary to the product information on the part of NKC or
- in case of incorrect, inexpert or unsound application of the supplied goods and/or performed work, irrespective of whether it concerns application by a professional or a non-professional user or installer.

The Customer indemnifies NKC against claims by third parties as referred to in this article.

## **12 Force majeure**

In case of force majeure NKC has the right to suspend the performance of the agreement with respect to the part affected, directly or indirectly, by the force majeure. The following counts as force majeure: any circumstance due to which NKC cannot be blamed for the failure to perform or due to which the Customer cannot reasonably require normal performance of the agreement, in any case including **(I)** war or war circumstances, **(II)** natural disasters, **(III)** fire or other destruction in the factories or warehouses, lock-outs, sit-down strikes, job strikes, both in the business of NKC and in that of suppliers, **(IV)** lack of means of transport, machinery or equipment breakdowns or other disruptions in the business of NKC or in that of suppliers, **(V)** restrictions or impediments in respect of production and/or supply of raw materials and auxiliary materials as well as restrictive government or public-law measures of whichever nature.

## 13 Processing of personal data

- 13.1** To the extent that personal data are processed in connection with the performance of the work, such Personal Data will be processed in a proper and careful manner and in accordance with the General Data Protection Regulation (GDPR) and the underlying privacy legislation and regulations. In case NKC has a processor process personal data, NKC will conclude a processing agreement with the processor in question.
- 13.2** Technical and organisational measures will be taken to protect the personal data against loss or any other form of unlawful processing as much as possible. However, NKC does not guarantee that the security will be effective under all circumstances. NKC will endeavour to have the security meet a level that, in view of the state of the art, the sensitivity of the personal data and the costs connected to taking security measures, is reasonable.
- 13.3** NKC is only responsible for the processing of the personal data in respect of which it is controller within the meaning of the GDPR. NKC is not responsible for all other processing operations of personal data, in any case including but not restricted to the collection of the personal data by the Customer, processing operations for purposes that the Customer has not disclosed to NKC, processing operations by third parties and/or for other purposes. Only the Customer is responsible for those processing operations. In connection with that the Customer guarantees that the content, the use and the personal data that it has provided to NKC are not unlawful and do not infringe any right of third parties.
- 13.4** For more information about the manner in which NKC processes the personal data, please refer to NKC's privacy statement.

## 14 Intellectual property rights

- 14.1** The intellectual property rights of NKC to all that NKC provides to the Customer in the performance of the agreement, in any case including drawings, images, calculations, designs, processes and models, will continue to be vested in NKC and may only be used by the Customer in order to perform the agreement. After the agreement has ended, the documents and information in question will be returned to NKC immediately on NKC's request.
- 14.2** If the performance of the agreement gives rise to intellectual property rights, the intellectual property rights, including the copyright, will be vested in NKC. In so far as the intellectual property rights will be vested in the Customer pursuant to the law, the Customer transfers those intellectual property rights to NKC in advance and the Customer will, if necessary, cooperate in this transfer and it furthermore grants advance authorisation with which NKC can do all that is necessary to have the intellectual property rights be vested in NKC. To the extent permitted by law, the Customer waives any moral rights that remain vested in the Customer.
- 14.3** In case NKC grants the Customer a right of use, this is always done on the basis of a non-exclusive and non-transferable licence, which is limited to the agreed use.
- 14.4** In case of violation of articles 14.1 up to and including 14.3, the Customer will owe NKC a penalty of € 50,000.00 per violation without any notice of default being required, without prejudice to the right of NKC to claim full compensation plus interest and costs. Paid or owed penalties do not reduce any owed compensation plus interest and costs. NKC and the Customer hereby expressly derogate from the provisions in Article 92, paragraph 2 of Book 6 of the Dutch Civil Code.

## 15 Termination

Without prejudice to provisions to the contrary in these general terms and conditions, NKC has the right to terminate the agreement by means of a Written statement if the other party does not comply with one or more provisions of the agreement and is in default.

## 16 Transferability of rights and obligations

- 16.1 The Customer may not transfer claims against NKC, for whatever reason, to a third party. Such claims are expressly not transferable. This clause has effect under property law within the meaning of Article 83, paragraph 2 of Book 3 of the Dutch Civil Code.
- 16.2 Without prior Written approval from NKC the Customer is not allowed to transfer any obligation under the agreement and/or these general terms and conditions to a third party.

## 17 (Partial) voidness and voidability

If a provision in these general terms and conditions is void or voidable, this will not result in these general terms and conditions being void or voidable in their entirety or in another provision thereof being (partially) void or voidable. If a provision in these general terms and conditions is void or voidable (and is subsequently voided), NKC will replace it by a valid provision that approaches the scope of the void or voided provision as closely as possible.

## 18 Choice of law, choice of forum

- 18.1 All legal relationships between NKC and the Customer are exclusively subject to Dutch law. The applicability of the Vienna Sales Convention (CISG) is expressly excluded.
- 18.2 Disputes between NKC and the Customer that ensue from any agreement with the Customer or that arise with respect to the performance thereof will be submitted exclusively to the judgment of the competent court of the Gelderland District Court, Zutphen location.

The latter does not affect the right of NKC to bring legal action against the Customer before the court of the place of business of the Customer.