



## GENERAL TERMS AND CONDITIONS OF SALE OJAH B.V.

### 1. Definitions and interpretation

1.1 In these General Terms and Conditions capitalised words and expressions have the following meaning:

<b>Buyer:</b>	the buyer of the Products.
<b>Contract:</b>	the contract between Ojah and Buyer for the sale and purchase of the Products.
<b>Confidential Information:</b>	means (a) any information that would be regarded as confidential by a reasonable business person relating to (i) the business, affairs, customers, clients, suppliers, plans or market opportunities of Ojah and (ii) the operations, processes, product information, know-how, designs or trade secrets of Ojah, (b) all physical and digital copies of the aforementioned information, (c) any information or analysis derived from the Confidential Information and (d) the content of the Contract.
<b>Delivery:</b>	has the meaning as set out in clause 5.2.
<b>Delivery Date:</b>	has the meaning as set out in clause 5.1.
<b>Delivery Location:</b>	has the meaning as set out in clause 5.1.
<b>Direct Damages:</b>	means: a) the reasonable costs and expenses which Buyer would have to incur to have Ojah performance fulfil the Contract, provided that these costs shall not be compensated in case the Contract is terminated ( <i>ontbonden</i> ) in whole or in part by Buyer; b) reasonable costs and expenses incurred in determining the cause and extent of the damages insofar as such determination relates to any Direct Damages within the meaning of these General Terms and Conditions; and c) reasonable costs and expenses incurred in preventing or limiting Direct Damages within the meaning of these General Terms and Conditions; d) reasonable costs and expenses incurred in

<b>Force Majeure Event:</b>	preventing or reducing any Direct Damages. has the meaning as set out in article 6:75 of the Dutch Civil Code including, which includes with regard to Ojah's performance, (a) any law or any action taken by a government or public authority, such as an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent, (b) fire, explosion or accident, (c) any labour or trade dispute, strikes, industrial action or lockouts and (d) non-performance by suppliers or subcontractors of Ojah.
<b>General Terms and Conditions: Ojah:</b>	these general terms and conditions of sale. Ojah B.V., a company incorporated and registered in the Netherlands with the chamber of commerce under number 9189930, whose registered office is at Cuneraweg 9c, 4051 CE Ochten, the Netherlands.
<b>IP Rights:</b>	patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), image rights and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>Order:</b>	Buyer's order for the purchase of Products, as set out in Buyer's purchase order form.
<b>Parties:</b>	Ojah and Buyer collectively, individually referred to as <b>Party</b> .
<b>Products:</b>	the goods (or any part of them) set out in the Order.
<b>Quotation:</b>	Ojah's quotation for the sale of



## GENERAL TERMS AND CONDITIONS OF SALE OJAH B.V.

certain Products.

**1.2** Unless expressly stated otherwise in General Terms and Conditions:

**(a)** written or in writing shall also include electronic communication by e-mail;

**(b)** words in singular include the plural and in the plural include the singular;

**(c)** any timeline or date with regard to Ojah's performance shall be considered estimates only and shall not be deemed a strict deadlines (*fatale termijn*); and

**(d)** a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

**1.3** In case of inconsistency between a provision of these General Terms and Conditions and a provision of the Contract, the provision of the Contract shall prevail.

### **2. Applicability**

**2.1** These General Terms and Conditions apply to all Contracts, including the services related to the sales and delivery of the Products.

**2.2** If any provision of these General Terms and Conditions is or becomes invalid or non-binding, the Parties shall remain bound by all other provisions hereof. In that event, the Parties shall replace the invalid or non-binding provision by provisions that are valid and binding and that have, to the greatest extent possible, or a similar effect as the invalid or non-binding provision, given the contents and purpose of such provision and these General Terms and Conditions.

**2.3** Ojah is entitled to unilaterally amend the General Terms and Conditions. Such amendment shall come into effect upon written notice to Buyer.

### **3. Offer and Contract**

**3.1** All offers by Ojah are non-binding, even in the event that the offer contains a term for acceptance.

**3.2** The Contract shall come into existence at the earliest of (i) Ojah issues a written acceptance of the Order or (ii) Buyer's written acceptance of the Quotation..

**3.3** An amendment or supplement to the Contract shall only be binding for Ojah, after Ojah has explicitly accepted such amendment or supplement in writing

### **4. Price and Payment**

**4.1** Buyer shall pay the price for the Products as set out in the Contract.

**4.2** Unless otherwise agreed in the Contract, the agreed prices are net prices in Euro, Ex Works (Ochten, the Netherlands) in accordance with to the latest version of the Incoterms. Prices are excluding VAT, import and export fees, excise duties and other taxes or levies imposed or levied in relation to the Products and excluding transport costs, deposits and packaging fees.

**4.3** If Ojah has taken on any costs of transport, packing, wrapping, boxing, loading, unloading or insurance of the Products, without an explicit written agreement on the price thereof, Ojah is allowed to charge the actual costs of these elements to Buyer.

**4.4** Ojah has the right to increase the given or agreed prices if, after Parties have entered into the Contract but

before delivery of the Products, a price increase of the costs related to the development of the Products occurs, and such increase is beyond Ojah's reasonable influence.

**4.5** Ojah shall invoice the amount payable by Buyer, and Buyer shall pay the invoices, in accordance with the payment scheme set out in the Contract

**4.6** If Buyer fails to make any payment due to Ojah under the Contract by the due date for payment, Buyer shall be immediately in default without any notice of default being required, and shall owe statutory commercial interest (*wettelijke handelsrente*) and extrajudicial costs (*buitengerechtelijke incassokosten*) as from the date of default until the date of payment in full.

**4.7** Buyer shall pay all amounts due under the Contract in full without any suspension (*opschorting*) set-off (*verrekening*), counterclaim, deduction or withholding (except for any deduction or withholding required by law). Ojah may at any time, without limiting any other rights or remedies it may have, set off (*verrekenen*) any amount owing to it by Buyer against any amount payable by Ojah to Buyer.

**4.8** Ojah has the right to settle Buyer's payments against the costs first, secondly against the statutory commercial interest due and finally against the capital sum and accrued interest due by Buyer.

### **5. Delivery**

**5.1** Ojah shall deliver the Products to the location set out in the Contract or any other location as notified by Ojah in writing (the **Delivery Location**) on the most current date as notified by Ojah to Buyer in writing (the **Delivery Date**). Unless otherwise agreed, Delivery shall take place Ex Works (Delivery Location) in accordance with the latest version of the Incoterms.

**5.2** Delivery is completed when Ojah places, or has the Products placed at Buyer's disposal at the Delivery Location.

**5.3** Ojah shall ensure that:

**(a)** each delivery of the Products is accompanied by a delivery note that shows the date of the Contract, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered; and

**(b)** if Ojah requires Buyer to return any packaging materials to Ojah, that fact is clearly stated on the delivery note. Buyer shall make any such packaging materials available for collection at such times as Ojah shall reasonably request. Returns of packaging materials shall be at Buyer's expense.

**5.4** Ojah may deliver the Products by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle Buyer to cancel or deny any other instalment.

**5.5** Any dates quoted for delivery, including the Delivery Date, are approximate only, and the time of delivery are not strict deadlines (*fatale termijnen*).

**5.6** If Ojah fails to deliver the Products, its liability shall be



## GENERAL TERMS AND CONDITIONS OF SALE OJAH B.V.

limited to the costs and expenses incurred by Buyer in obtaining replacement Products of similar description and quality in the cheapest market available, less the price of the Products.

**5.7** Ojah shall not be liable for:

- (a) any delay in delivery of the Products that is caused by a Force Majeure Event; or
- (b) any failure to deliver the Products to the extent that such failure is caused by a Force Majeure
- (c) any delay in delivering or failure to deliver that is caused by Buyer's failure to provide Ojah with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

**5.8** If Buyer fails to take delivery of the Products, then, except where such failure or delay is caused by a Force Majeure Event or Ojah's failure to comply with its obligations under the Contract:

- (a) delivery of the Products shall be deemed to have been completed on the date on which Delivery should have taken place in accordance with clause 5.2; and
- (b) Ojah shall store the Products until actual delivery takes place, and charge Buyer or have Buyer charged for all related costs and expenses (including insurance).

### **6. Quality**

**6.1** The Products shall on Delivery:

- (a) conform in all material respects with their written description and specifications; and
- (b) be fit for the purpose described by Ojah in writing.

**6.2** All statements of Ojah concerning weights, measurements, numbers and/or other indications regarding the Products are made with the greatest possible care. However, Ojah makes grants no warranties in this respect and Buyer is aware of possible discrepancies that are customary in the sector (including without limitation weight loss as a result of cooling or freezing).

**6.3** Upon Delivery, Buyer shall verify that the Products comply with the quoted or agreed weights, measurements, numbers and/or other indications, adequacy and conformity.

**6.4** Buyer shall report all visible defects with regard to the Products to Ojah in writing:

- (a) within forty-eight (48) hours from Delivery in case of frozen Products; and
- (b) within twenty-four (24) hours from Delivery in case of non-frozen Products.

**6.5** If Buyer fails to give notice as specified in clause 6.4 then, except in respect of any defect which is not one which would be apparent on reasonable inspection, the Products shall conclusively be presumed to comply with the Contract and, accordingly, Buyer shall be deemed to have accepted the delivery of the Products in question and Ojah shall have no liability to Buyer with respect to that delivery (except in relation to liability for any latent defects).

**6.6** Buyer shall report any latent defects to Ojah in writing within ten (10) days after the moment of discovery or after the moment that the defect should reasonably have been discovered. If Buyer fails to give notice in time, its

right shall lapse and Ojah shall have no liability to Buyer whatsoever.

**6.7** Buyer must determine that and shall be responsible for the Products and the related documentation, packaging, labelling and/or other information to comply with all applicable laws and regulations of the country of destination.

### **7. Remedies**

**7.1** In case the Products in Buyer's opinion do not comply with clause 6.1:

- (a) Ojah shall be granted a reasonable opportunity of examining such Products; and
- (b) Buyer (if asked to do so by Ojah) returns such Products to Ojah's place of business at Ojah's cost.

**7.2** Subject to this clause 7, Ojah shall, at its option, replace the defective Products, or refund the price of the defective Products in full. This shall constitute Ojah sole obligation and Buyer sole remedy in case of non-conformity and shall be in lieu of and excludes all Buyer's other rights and remedies.

**7.3** Ojah shall not be liable for the Products' failure to comply with clause 6.1 in any of the following events:

- (a) Buyer makes any further use of such Products after giving notice in accordance with clauses 6.5 or 6.6;
- (b) the defect arises because Buyer failed to follow Ojah's oral or written instructions as to the transportation, treatment, storage, handling or usage of the Products or (if there are none) good trade practice regarding the same;
- (c) the defect is reported after expiry of the Product's shelf life;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or handling by or on behalf of Buyer.

**7.4** After determination of a defect in a Product, Buyer is obligated to do all that is necessary to prevent or, if not possible, mitigate damage (to Ojah, Buyer or third parties), among which the ceasing of the use, treatment or processing of the Product and recall of the Product.

**7.5** If it is determined that no defect was present in the Product, the costs and damages incurred by Ojah as a result of the report of a defect by Buyer, including the investigation costs made in relation to the performance of clause 7.1, payable by Buyer.

### **8. Packaging (emballage)**

**8.1** Unless otherwise agreed in the Contract, Buyer shall never obtain ownership of the packaging of the Products, including but not limited to crates, pallets, containers and other tools for transport, even if Buyer pays a deposit. Buyer is not entitled to place the packaging at the disposal of third parties or to pledge or otherwise encumber the packaging.

**8.2** Buyer shall not use the packaging for other purposes than for transport of the Products.

**8.3** Buyer may not change, remove, paint, sticker or in any way cover any signs or indications placed on the packaging.

**8.4** Buyer shall return the packing cleaned and, if necessary, sorted, to Ojah at the next delivery by Ojah,



## GENERAL TERMS AND CONDITIONS OF SALE OJAH B.V.

and in any event ultimately within thirty (30) days as from the Delivery by Ojah.

**8.5** In the event of damage to or loss of the packaging or breach by Buyer of its obligations as described in this clause 8, Buyer shall be immediately in default, without a notice of default, and loses its right to repayment of the deposit and shall be liable for any damages incurred or suffered by Ojah.

### 9. Risk and ownership

**9.1** The risk of the Products transfers to Buyer upon Delivery.

**9.2** Ownership of the Products shall not pass to Buyer until Ojah receives payment in full (in cash or cleared funds) for the Products, until that moment Ojah retains ownership of the Products.

**9.3** Buyer shall at all times do all that can be reasonably expected to preserve and secure the ownership rights of Ojah.

**9.4** In the event of the attachment of, or any other claim of rights by third parties with respect to, Products that fall under Ojah's right to retention of ownership, Buyer shall immediately inform Ojah of such event.

**9.5** Buyer shall insure and keep insured all Products that fall under the right to retention of ownership against any and all commonly existing risks in the branch, including, but not limited to fire, explosion- or water damage and theft, and shall provide Ojah with the insurance policy at first request. In the event of payment under the insurance policy, Ojah is entitled to such payment. In as far as necessary, Buyer herewith agrees to provide any and all cooperation necessary or desirable in such event.

### 10. Limitation of liability

**10.1** Ojah's liability under a Contract shall be limited to the amount indemnified by Ojah's insurance.

**10.2** If, for whatever reason, no amount is indemnified under the insurance, Ojah's liability under a Contract shall be for Direct Damages only and shall not exceed fifty percent (50%) of the amount paid by Buyer to Ojah under that Contract.

**10.3** Except in case of liability caused by wilful intent or gross negligence of Ojah or its managerial staff (*opzet of bewuste roekeloosheid van Ojah en haar leidinggevende ondergeschikten*) Ojah's liability for other damages than Direct Damages is excluded.

**10.4** Ojah's liability for any act or omission of any auxiliary person (*hulppersoon*) engaged by Ojah in the performance of the Contract shall be expressly excluded.

**10.5** The exclusions and limitations of liability as set out in these General Terms and Conditions can also be invoked by Ojah's employees and any third party contracted by Ojah in connection with the execution of the Contract.

**10.6** Any and all claims for damages shall lapse within twelve (12) months after the day Buyer became known with the damage and Ojah as the liable party.

**10.7** Buyer shall indemnify and hold Ojah harmless from any and all damages suffered or incurred by Ojah arising out of or in connection with:

(a) any breach of a Contract by Buyer;

(b) the storage, handling, transportation, marketing, sale or resale, use or disposal of the Product by Buyer or any other party;

(c) Buyer's failure to comply with applicable laws and regulations of countries in which the Products are resold; and

(d) any claim made against Ojah by a third party for death or personal injury arising out of or in connection with defective Products, to the extent that the defect in the Products is attributable to the acts or omissions of, or on behalf of, Buyer.

### 11. Recall

Upon Ojah's request, Buyer shall immediately recall any Products that it has brought into circulation (whether or not by means using the Product in another product) that have or might have a defect. All costs in relation to such recall-action shall be borne by Buyer, unless the recall-action does not come for the risk of Buyer pursuant to the Contract, these General Terms and Conditions.

### 12. Intellectual property

**12.1** All IP rights related to or vested in the Products, whether or not designed, developed or assembled specifically for Buyer, and/or the deliverables of the services rendered by Ojah and the process of production thereof vest exclusively in Ojah. Buyer acknowledges Ojah's ownership and rights in the IP Rights and claims no rights except as herein provided.

**12.2** Nothing in these General Terms and Conditions shall be considered to transfer any IP Rights to Buyer.

**12.3** Ojah makes no statement or warranty as to the validity or enforceability of the IP Rights nor as to whether the same infringe upon any IP rights of third parties.

**12.4** Buyer shall promptly give notice in writing to Ojah in the event that it becomes aware of:

(a) any infringement or suspected infringement of the IP Rights in or relating to the Products; and

(b) any claim that any Products or the manufacture, use, sale or other disposal of any Products, infringes the rights of any third party, including without limitation any IP Rights.

### 13. Confidentiality

**13.1** Buyer shall:

(a) keep all Confidential Information secret;

(b) not use the Confidential Information otherwise than in the exercise and performance of its rights and obligations under the Contract (the **Permitted Use**);

(c) not disclose any Confidential Information to any person except to its employees and then only to those who need to know it for the Permitted Use;

(d) not disclose or divulge Confidential Information to any third party without first securing Ojah's express written approval; and

(e) ensure that its employees and the involved third parties are aware of, and comply with, this clause 13.

**13.2** Confidential Information shall not include information which is (i) in the public domain prior to the disclosure to Buyer, (ii) is lawfully in Buyer's possession prior to the disclosure by Ojah, (iii) becomes part of the public domain by publication or otherwise through no





## GENERAL TERMS AND CONDITIONS OF SALE OJAH B.V.

unauthorized act or omission on the part of Buyer or (iv) is independently developed by an employee(s) of Buyer with no access to the disclosed Confidential Information.

**13.3** If Buyer develops or uses a product or a process which, in the reasonable opinion Ojah, might have involved the use of any of the Confidential Information, Buyer shall, at the written request of Ojah, supply to Ojah information reasonably necessary to establish that Ojah's Confidential Information has not been used or disclosed in order to develop or use that product or process.

**13.4** Buyer shall notify Ojah if it (or any of its employees connected with the performance of the Contract) becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to Ojah.

**13.5** In case of breach of a provision set out in this Clause 13 by Buyer, it shall incur, without further notice of default, a penalty immediately due and payable, not subject to mitigation, of insert amount e.g. EUR 25,000 per event, without prejudice to Ojah's other rights and remedies, including without limitation the right to claim specific performance (*nakoming*), the right to terminate (*ontbinden*) the Contract in whole or in part and/or the right to claim additional compensation for the actual loss suffered.

### **14. Force majeure**

**14.1** A Party which is prevented, hindered or delayed in or from performing any of its obligations under a Contract by a Force Majeure Event shall not be in breach or otherwise liable for any such failure or delay in the performance of such obligations.

**14.2** The time for performance of such obligations under a Contract shall be extended accordingly.

### **15. Termination**

**15.1** Ojah has the right to terminate (*ontbinden*) this any Contract, in whole or in part, by giving written notice with immediate effect if any of the following events occurs:

**(a)** Buyer's breach of an obligation under the Contract and, if the breach is capable of remedy, fails to remedy the breach within thirty (30) days of a written notice of default; or

**(b)** any action or proceedings under any bankruptcy or insolvency law are taken against Buyer, either by Buyer itself or by a third party.

**15.2** Buyer waives its right to terminate (*ontbinden*) the Contracts, in whole or in part, or suspend any of its obligations (*opschorten*) the Contract.

### **16. Governing law and disputes**

**16.1** These General Terms and Conditions and any and all Contracts are construed in accordance with and governed by the laws of the Netherlands. The applicability of the Vienna Sales Convention 1980 (CISG) is expressly excluded.

**16.2** Any and all disputes arising out of or in connection with these General Terms and Conditions and any and all Contracts shall be exclusively submitted to the competent court in Arnhem, the Netherlands.

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