

ROYAL DELFT
—— **KONINKLIJKE PORCELEYNE FLES** ——

GENERAL CONDITIONS OF SALE AND DELIVERY

1. Definitions

1.1 In these general conditions (“Conditions”), the following terms have the following meanings:

Seller: Royal Delft and its affiliated operating companies that provide products and/or services to the Purchaser (full name of Royal Delft: N.V. Koninklijke Delftsch Aardewerkfabriek “De Porceleyne Fles Anno 1653” previously Joost Thooft & Labouchere);

Purchaser: Each natural person or legal person on whose order the Seller supplies products or with whom the Seller enters into an Agreement or with whom the Seller negotiates the conclusion of an Agreement;

Agreement: each agreement concluded between the Seller and the Purchaser, each amendment or addition thereto, as well as all (juristic) acts in preparation or implementation of that agreement;

Products: all goods that are the subject of an Agreement;

Order: each order of a Purchaser, in whatever form.

2. Applicability

2.1. These general conditions apply to each offer from and each agreement with the Seller.

2.2. The applicability of general conditions of the Purchaser is expressly excluded by the Seller.

3. Offers, conclusion of Agreements and quotations and specifications regarding Products

3.1. An offer or (price) quotation of the Seller does not bind him and is only an invitation to the Purchaser to place an Order.

3.2. An Agreement can only be concluded if and insofar as the Seller accepts an Order of the Purchaser in writing or the Seller carries out an Order, unless the Purchaser proves that the Seller has accepted the Order of the Purchaser in any other way – and fully and unconditionally. If the Seller delivers a performance on request before full agreement about the price and payment conditions applicable to that performance has been reached, the Purchaser will pay the Seller in accordance with the Seller’s then applicable rates, with due observance of the provisions of Articles 5 and 6.

3.3. Although the Seller exercises due care when providing numbers, measurements, weights and/or other specifications regarding the Products, it cannot guarantee that deviations will not occur. Samples, drawings or models shown or provided only serve to indicate the Products. If the Purchaser proves that the Products delivered or provided deviate so much

from the statements, samples, drawings or models provided or shown by the Seller, that, according to the principle of good faith it would be unacceptable for the Purchaser to be obliged to purchase them, the Purchaser will have the right to terminate the Agreement, but without being entitled to any form of compensation.

4. Amendments and additions

- 4.1. Amendments and additions to any provision of an Agreement and/or the Conditions can only be agreed in writing.
- 4.2. If an amendment and/or addition as referred to in paragraph 1 is agreed, that amendment or addition only applies to the Agreement concerned.

5. Prices and VAT

- 5.1. All prices of the Seller are expressed in euros and excluding turnover tax, all this unless specified otherwise. Unless stated otherwise in the Seller's brochures, price lists or other promotional material or unless expressly agreed otherwise, the costs of special arrangements regarding packaging and shipment, the costs of customs and excise, as well as all (other) levies or taxes imposed or levied in respect of any performance will be charged separately to the Purchaser.

6. Payment

- 6.1. If Products are delivered, the Purchaser must pay the Seller the amounts charged to him in the currency stated in the invoice at the time of delivery of those Products, unless agreed otherwise in writing. All payments must be made at the Seller's office or into a giro account or bank account designated by him, such at the Seller's discretion.
- 6.2. Objections to invoices, specifications, descriptions and prices, if any, must be made known to the Seller in writing within 10 days. If this is not possible due to a cause beyond the Purchaser's control, the Purchaser must at any rate inform the Seller of his objections in writing as soon as reasonably possible.
- 6.3. All amounts charged to the Purchaser must be paid without discount or deduction.
- 6.4. The Purchaser is not entitled to set off a claim on his part against a claim of the Seller, unless he is permitted to do so pursuant to a final judicial decision or arbitral award.
- 6.5. The Purchaser is not entitled to suspend his obligations, unless the Purchaser submits the dispute to the court with jurisdiction in accordance with Article 18.3 within 30 days of the relevant obligations having become due and payable.
- 6.6. If the Seller has or may have obvious misgivings about the creditworthiness of the Purchaser from time to time, and/or if the Purchaser repeatedly fails to pay correctly or in good time and has been warned by the Seller on that account, the Seller will be entitled to demand, before delivering any (further) performance, also within the framework of current agreements, that the Purchaser pays the purchase price of the Products in advance or furnishes adequate security in an amount equal to what the Seller may claim from the Purchaser under the Agreement, including also cash conditions and conditions of documentary credit, such as irrevocable letters of credit, cash against documents or cash against delivery, in accordance with standard business practice.
- 6.7. The Purchaser owes interest equal to the 1-month rate of the Euro Interbank Offered Rate, increased by 3% (calculated on an annual basis), on all amounts not paid on the last day of the payment term, from that last day, without notice of default being required. After the end of each month, the amount on which the interest is calculated is increased by the interest due for that month.

6.8. If the Purchaser has still not paid the amount and interest due after the expiry of a further payment term, the Purchaser will be obliged to compensate the Seller for all extrajudicial and judicial costs, including the reasonable costs of legal assistance. If the Seller grants the Purchaser a postponement for delivering any performance, as a goodwill gesture or for any other reason, the new payment term is always a strict deadline.

7. The term of delivery

- 7.1. The term of delivery for products stated by the Seller is based on the circumstances applicable at the Seller at the time of the conclusion of the Agreement and, insofar as related to the performances of third parties, to the data provided to the Seller by those third parties. The Seller will as much as possible observe the term of delivery and/or the term of performance.
- 7.2. The aforementioned terms commence on the date of the written order confirmation by the Seller. If the Seller needs data or tools to be provided by the Purchaser for the performance of the Agreement, the terms commence on the date on which all the required data or tools have been received by the Seller, but not before the date of the written order confirmation.
- 7.3. The Purchaser must ensure that nothing for his part precludes observance of certain agreed terms, including the terms of delivery and acceptance.
- 7.4. The Purchaser will not be entitled to any damages if a term is exceeded, unless there is question of intent or gross negligence of the Seller or his managerial staff. Nor will the Purchaser be entitled to terminate the Agreement, unless the exceeding of the term is such that the Purchaser cannot reasonably be required to maintain (the relevant part of) the Agreement. If that is the case, the Purchaser, after giving notice of default with a reasonable further term for performance, will be entitled to terminate the Agreement by registered letter, provided only insofar that that is strictly necessary.
- 7.5. The Seller may at any time deliver the Products in consignments.

8. Delivery and risk

- 8.1. If this is expressly stated in the offer or the order confirmation and has subsequently been agreed, the delivery of the Products, including the costs of the delivery and the passing of the risk, is in accordance with standard business conditions, such as EXW., f.o.b., c.i.f., c.f.r. etc., and in such cases always subject to the Incoterms 2000 of the International Chamber of Commerce in Paris.
- 8.2. If the conditions mentioned in the previous paragraph have not been agreed, the delivery and the passing of the risk in respect of the Products and the packaging thereof are always in the place where and at the time at which the products are ready for shipment to the Purchaser ("ex works"). The Seller will inform the Purchaser as soon as possible of the above-mentioned time and place and the Purchaser will accept the Products as soon as possible, but not later than 8 days after the notice.
- 8.3. If the Purchaser fails to accept the Products (in time) for a legally invalid reason, he will be in default without notice of default being required. The Seller will then be entitled to store the Products at the expense and risk of the Purchaser. The Purchaser will continue to owe the purchase amount, increased by interest and costs by way of damages.
- 8.4. If an item (for example show cases or show racks or promotional material) is made available to the Purchaser without the item being sold, all (intellectual) property rights remain vested in the Seller, also if the Purchaser pays a fee, but the item will be entirely at the expense and risk of the Purchaser from the time it has left the Seller's business premises. The Purchaser must arrange full insurance for the items concerned in favour of

the Seller and will allow the Seller to inspect the policy schedule at the Seller's request.

9. Force majeure

- 9.1. If the Seller is unable to fulfil his obligations towards the Purchaser due to a non-attributable failure (force majeure), the obligations concerned will be suspended for the duration of the force majeure situation.
- 9.2. If the force majeure situation has lasted at least three months, both parties will be entitled to terminate the Agreement in writing, wholly or in part.
- 9.3. Force majeure in relation to the Seller means each circumstance independent of the Seller's will as a result of which fulfilment of (the relevant part of) his obligations towards the Purchaser is prevented, delayed or made uneconomical or as a result of which the fulfilment of those obligations cannot reasonably be required of the Seller, including without limitation, strikes, transportation disturbances, riots and war, acts of God, theft, wilful damage, fire and non-performance or untimely performance by suppliers of the Seller.
- 9.4. The parties will inform each other as soon as possible of a (possible) force majeure situation.

10. Retention of title

- 10.1. Notwithstanding the actual delivery, the ownership of the Products does not pass to the Purchaser until after he has paid in full all that he owes or will owe the Seller for the Products delivered or to be delivered pursuant to the Agreement, including the purchase sum, any surcharges due pursuant to these Conditions or the Agreement, interest, taxes and costs, as well as any work done or to be done pursuant to such an Agreement.
- 10.2. All payments made by the Purchaser will first be utilized to settle any interest and costs, and will subsequently be utilized to settle those invoices that have been outstanding the longest.
- 10.3. Before the ownership of the Products has passed to the Purchaser, the Purchaser will not be entitled to hire the Products out to third parties or give them in use or pledge them to third parties, or otherwise encumber them in favour of third parties. The Purchaser will only be entitled to sell and deliver the products owned by the Seller to third parties, insofar as necessary within the framework of the Purchaser's normal business operations.
- 10.4. The Purchaser must keep the Products delivered subject to retention of title carefully and identifiable as property of the Seller and insure them fully in favour of the Seller. On the Seller's demand, the Purchaser must provide the Seller with a copy of the policy schedule.
- 10.5. If and as long as the Seller is the owner of the Products, the Purchaser must immediately inform the Seller if any part of the Products has gone lost or is damaged or if (any part of) the Products (is) are seized and/or otherwise claimed. In addition, the Purchaser must inform the Seller on demand of the location of the Products of which the Seller is the owner.
- 10.6. In case of a seizure, a (provisional) moratorium or a liquidation, the Purchaser will immediately inform the seizer, the bailiff, the administrator or the receiver of the (ownership) rights of the Seller.

11. Intellectual property

- 11.1. The Seller declares that, to the best of his knowledge, the Products do not infringe on valid intellectual property rights of third parties.
- 11.2. The Purchaser guarantees that he will not infringe on the intellectual property rights of the Seller or his suppliers in respect of the Products (and will not allow or enable third parties to do so), for example by copying, adapting or imitating the Products.

12. Inspection and complaint

- 12.1. The Purchaser is obliged to inspect or have inspected the Products meticulously immediately on arrival at the place of destination or, if earlier, on receipt by himself or a third party acting on his behalf. Any complaints about defects in the Products in terms of material or workmanship, as well as about differences in terms of amount, weight, composition and quality between the Products delivered and the relevant description on the order confirmation and/or the invoice must be made known to the Seller in writing within 10 days of arrival of the Products. Defects that could not reasonably have been established within the above-stated term must be reported to the Seller in writing immediately after having been established or at any rate within six months of arrival of the Products.
- 12.2. The Purchaser will give the Seller all assistance required by him for the investigation of the complaint.
- 12.3. The Purchaser has no right to complain about Products if investigation of the complaint by the Seller is impossible.
- 12.4. The Purchaser is not free to return the Products before the Seller has given his written permission. The reasonable costs of returning will then be borne by the Seller. The Products remain at the Purchaser's risk until they are under the Seller's control.
- 12.5. Defects with regard to a separate lot of Products that is part of a delivery consisting of one or more lots only entitles the Purchaser to termination of the entire Agreement if the Purchaser cannot reasonably be required to maintain the remaining part of the Agreement.
- 12.6. The Purchaser may not enforce claims arising from complaints about defects of Products against the Seller, so long as the Purchaser has failed to fulfil any related obligation towards the Seller.
- 12.7. If a complaint has been made in time, correctly and in accordance with the provisions of this article and it is in the Seller's reasonable opinion sufficiently proven that the Products do not fulfil the agreed requirements, the Seller will, at his own discretion, replace the Products that appear to be defective by new Products on returning of the defective Products or repair the Products concerned skilfully or give the Purchaser a discount off the purchase price determined in mutual consultation. By delivering one of the above-mentioned performances, the Seller will be fully discharged and the Seller will not be obliged to make any (further) (damage) payment.

13. Warranty

- 13.1. The Products are warranted to be free from defects in material and workmanship for a period of 12 months after delivery. The warranty means that the Seller will, at his discretion, repair or replace the Products at his expense. All products replaced become the property of the Seller.
- 13.2. The warranty does not apply if the defects are (partially) due to incorrect, careless or inexpert use or represent normal wear and tear for the period of use.
- 13.3. The Seller does expressly not warrant recommendations or advice regarding the use of the Product from third parties, nor does the Seller warrant such recommendations or instructions from the Purchaser to his customers.

14. Liability and indemnification

- 14.1. The Seller will never be liable for any indirect damage of the Purchaser or third parties, including also consequential damage, immaterial damage, trading loss and environmental damage.

- 14.2. The Seller's liability towards the Purchaser, on whatever ground, per event (a series of related events counting as one event) is therefore limited to the relevant contract sum (excluding VAT). If it is not possible to designate a contract sum, the Seller's liability will be limited to the amount he receives in the case from his corporate liability insurer. The liability is in all cases limited to a maximum amount of 250,000 euros.
- 14.3. The limitations of liability in the paragraphs 1 and 2 do not apply insofar as the damage concerned is due to intent or gross negligence of the Seller or his managerial staff or insofar as the Seller's liability arises from mandatory law regarding product liability.

15. Other obligations and responsibilities of the Purchaser

- 15.1. The Purchaser must provide the Seller with all the information required for the performance of the Seller's duties in good time and guarantee that it is correct and complete.
- 15.2. The Purchaser shall not in whole or partially remove or make invisible brand names and/or other identifying marks affixed to the Products.

16. Termination

- 16.1. In the event of a (provisional) moratorium, liquidation, interruption or winding-up of the business of the Purchaser, the Seller will be entitled to terminate all agreements with the Purchaser, unless the Seller informs the Purchaser within a reasonable period of time that he requires performance of the relevant Agreement, in which case the Seller will be entitled, without notice of default being required, to:
- suspend the performance of the relevant Agreement(s) until payment is sufficiently secured; and/or
 - suspend all its obligations towards the Purchaser, if any, all this without prejudice to the Seller's other rights under any Agreement with the Purchaser and without the Seller being obliged to pay any damages.
- 16.2. If the Purchaser fails to fulfil any obligation arising for it under any Agreement properly or within a stipulated period or otherwise on time, the Purchaser will be in default and the Seller will be entitled, without notice of default or judicial intervention being required, to:
- suspend the performance of that Agreement and agreements related with it until payment is sufficiently secured; and/or
 - terminate in whole or partially that Agreement and agreements related with it, all this without prejudice to the Seller's other rights under any Agreement with the Purchaser and without the Seller being obliged to pay any damages.
- 16.3. If an event as referred to in paragraph 1 or paragraph 2 occurs, all claims of the Seller against the Purchaser and the above-mentioned claims under the agreement(s) concerned will become immediately and fully due and payable and the Seller will be entitled to take back the Products concerned. The Seller and his authorized representatives will then be entitled to enter the sites and buildings of the Purchaser to take possession of the Products. The Purchaser will be obliged to take the necessary measures to enable the Seller to effect his rights.

17. Assignment of rights and obligations

- 17.1. The Seller may assign the rights and obligations described in any Agreement with the Purchaser to a third party. If the Seller intends to transfer his obligations, he must inform the Purchaser of that intention in advance and the Purchaser will have the right to terminate the Agreement. The Seller will not be obliged to make any (damage) payment.

17.2. The Purchaser may not assign his rights and/or obligations under an Agreement to a third party without the prior written consent of the Seller.

18. Application law, duty of disclosure and competent court

18.1. These Conditions as well as all agreements and all disputes arising from them or related to them are governed by Dutch law.

18.2. If these Conditions apply in an international relationship with the Purchaser, the latter must always immediately inform the Seller of any provisions of these Conditions that cannot be enforced in the country of the Purchaser. Provided approved by the Seller in advance, the Seller will then bear the reasonable costs of any required external legal investigation. Insofar as the Purchaser fails to comply with the provisions of the first sentence of this paragraph, he may not invoke the possible non-enforceability in or out of court and must indemnify the Seller against any damage resulting therefrom, unless the Seller has refused to pay the reasonable costs as referred to above.

18.3. Provided that applicable national or international rules of law do not prescribe otherwise as mandatory, all disputes between the parties will in the first instance only be submitted to the competent court in The Hague, without prejudice to the Seller's right to submit the dispute instead to the court otherwise competent pursuant to national or international rules of law.

18.4. The applicability of:

- The United Nations Convention on Contracts for the International Sale of Goods; Vienna, 11 April 1980 (“Vienna Sales Convention”); and

- The Convention on the Law Applicable to Contracts for the International Sale of Goods; The Hague, 22 December 1986 (“The Hague Convention on Applicable Law International Sales”),

is expressly excluded by the parties.

Specific assignment

In addition to the other provisions in these general terms and conditions, the provisions included in this chapter “specific assignment” apply if the Seller produces products (or has products produced) on the specific instruction of the Purchaser.

19. Prices

19.1. Unless agreed otherwise, the Purchaser will be asked to make a down payment of 30% or an advance payment of the start-up costs.

19.2. In the event of an increase of one or more costs price factors, the Seller will be authorised to raise the price accordingly, unless it was already aware of the increase at the time of the order confirmation.

20. (Intellectual) property

20.1. All drawings, moulds, lithos, designs, sketches, models, as well as the graphic design of (trade) names, visual elements and logos made by or on behalf of the Seller in the performance of the Agreement will remain the (intellectual) property of the Seller.

20.2. The Purchaser warrants that the use of the details, (trade) names, trademarks or other items provided by the Purchaser does not result in the Seller being in breach of statutory provisions or rights of third parties. The Purchaser indemnifies and holds harmless the

Seller against all direct and indirect loss arising from claims that third parties enforce against the Seller on the basis of a breach of the abovementioned guarantee.

- 20.3. In the event that an offer is accompanied by budgets, plans, catalogues or other documents, these will continue to be the property of the Seller at all times and must be returned to the Seller, postage paid, upon request. They may not be multiplied without permission from the Seller, nor be submitted to third parties for inspection.

21. Performance of the Agreement

- 21.1. If he considers this necessary or desirable for the proper execution of the assignment, and following consultation with the Purchaser, the Seller is authorised to engage others in the performance of the Agreement, the costs of which will be charged to the Purchaser in accordance with the submitted quotations.
- 21.2. Any specific wishes of the Purchaser with regard to the transport or the dispatch will only be met if the Purchaser has agreed to bear the additional costs involved.
- 21.3. Small and/or customary derogations will never lead to a right of recovery of any kind. The Seller is authorised to deliver up to 15% more or less than the ordered quantity. In addition, the Seller is authorised to deliver up to 5% of so-called “second choice”, on the understanding that this will be subject to a discount, to be agreed upon at a later stage.

These General Conditions have been filed with the Chamber of Commerce in The Hague and will be sent to the Purchaser on demand, free of charge.