

GENERAL CONDITIONS OF SALE AND DELIVERY OF FASSAWALL B.V.  
Version of June 2021, filed with the Chamber of Commerce under number 08147664

## 1. Identity of the Seller

Fassawall B.V.

Operating under the name: Fassawall B.V.

Location & visiting address: Bettinkhorst 35 in (7207 BP) Zutphen

Telephone number: (0575) 511 508

Office hours: Monday to Thursday from 8 a.m. to 4.30 p.m. and on Friday from 8.30 a.m. to 3.30 p.m.

Email: info@fassawall.com

COC number: 08147664

VAT identification number: NL8159.01.264.B01

## 2. General

- 2.1. These General Terms and Conditions apply to all Agreements, offers and quotations under which the Seller undertakes to sell and deliver Products to a legal identity or natural person, who undertakes to pay a cash price for these Products.
- 2.2. The provisions of these General Terms and Conditions have also been drawn up for the benefit of the Seller's directors and employees and any other auxiliary persons involved in the performance of the Agreement.
- 2.3. The applicability of any general terms and conditions of the Buyer is expressly rejected by the Seller in advance.
- 2.4. The Seller is entitled to amend these General Terms and Conditions. The Buyer is deemed to have accepted any amendment to these General Terms and Conditions if they have not notified the Seller of their objections in writing within seven days after the Seller has notified the Seller of the amendments in writing.
- 2.5. If and insofar as the Agreement contains any provisions contrary to these General Terms and Conditions, the provisions of the Agreement will take precedence.
- 2.6. Insofar as these General Terms and Conditions are translated into a language other than Dutch, the Dutch text will always take precedence in case of any differences.

## 3. Definitions

**Buyer** means any legal entity or natural person practising a profession or running a business who has entered into an Agreement with the Seller or at least intends to do so;

**Delivery** means making the Product available to the Buyer, regardless of whether the Buyer takes delivery of the Product at the time it is made available, at the Seller's address;

**Agreement** means the Written contract of sale under which the Seller undertakes to supply a Product and the Buyer undertakes to pay a cash price for it;

**Product** means any moveable property offered, sold and delivered by the Seller;

**Written/in Writing** means in writing, by email, via the website of the Seller or by any other electronic means agreed upon between the Buyer and the Seller, with messages being stored which can be made readable within a reasonable period of time;

**Seller** means the private limited liability company Fassawall B.V.

#### **4. Conclusion and content of the Agreement**

- 4.1. All our offers in which the contrary is not explicitly stated are entirely without obligation and can be changed without prior notice as long as the Seller has not confirmed or carried out the order. All offers may be revoked by the Seller at any time, even after the offer has been accepted by the Buyer. In the event of offers and/or deliveries according to samples, the sample is only an example of the average quality.
- 4.2. Offers and/or deliveries are always made with a tolerance as described in Article 10 of these General Terms and Conditions.
- 4.3. The Agreement between the Buyer and the Seller is concluded by the Buyer signing and returning the quotation sent by the Seller to the Buyer, by the Buyer signing and returning the order confirmation sent by the Seller to the Buyer or by the Seller sending an order confirmation to the Buyer.
- 4.4. In the event of any discrepancy between the order – as intended by the Buyer – and the Seller's written confirmation, the Buyer is bound by the Seller's written confirmation, unless the Buyer notifies the Seller in writing within eight days of the date of the confirmation that the Seller's confirmation is not in accordance with the order and the Buyer proves that the Seller was aware of this.
- 4.5. The Seller reserves the right to refuse orders.
- 4.6. Verbal promises, orders and arrangements will not be binding on the Seller until they have been confirmed in writing by the Seller.

#### **5. Prices**

- 5.1. All prices offered and agreed upon are exclusive of VAT. Unless the Buyer and the Seller have agreed otherwise, import duties, clearance charges, taxes and the like are payable by the Buyer.
- 5.2. If, after the conclusion of the Agreement but before delivery of the Product, changes occur in cost price-determining factors, such as purchase prices, export duties, wages, taxes, levies and the exchange rate of the euro against foreign currency, the Seller may increase the prices set before or at the time of conclusion of the Agreement, taking the changed amounts into account.
- 5.3. If the prices have not been determined before or at the time of conclusion of the Agreement, the prices applied by the Seller on the day of delivery will be the prices to be charged by the Seller and payable by the Buyer.

#### **6. Transport and Delivery**

- 6.1. Unless otherwise agreed, Delivery within the EU is made under the delivery condition Delivered to Destination ('DAP'), and Delivery outside the EU is made under the delivery condition delivery duty unpaid ('DDU'), as referred to in the Incoterms® 2020, to the Buyer's address as stated in the order confirmation or as stated in Writing by the Buyer to the Seller. If the Buyer's address is not accessible via a properly passable site, Delivery will be made at a location near the Buyer's address that is still accessible via a properly passable site.
- 6.2. The Seller is not obliged to unload the Products at the Buyer's premises. In the event that the Seller, or at least the driver of or on behalf of the Seller, assists the Buyer with unloading, they will do so at the Buyer's risk.
- 6.3. A waybill, delivery note or similar document issued upon Delivery is deemed to accurately show the quantity of the Products delivered, unless the Buyer makes its objection known to the driver immediately upon receipt of the Products, makes a note to that effect on the waybill and simultaneously notifies the Seller of this in writing without delay. If the Buyer makes its objection

known in the manner described above, any claim of the Buyer against the Seller in respect of non-conformity and in respect of demanding performance as regards the quantity of the delivery will lapse.

- 6.4. Even if the Buyer informs the Seller on time that a quantity smaller than stated on a waybill, delivery note or similar document issued with the Delivery has been delivered, this does not entitle the Buyer to suspend payment for the goods that have been delivered.
- 6.5. An agreed delivery period is always a target period and not a deadline.
- 6.6. The Seller has the right to deliver the order in parts or wait until the entire order is ready for delivery.
- 6.7. If the Buyer and the Seller have entered into an Agreement for the Delivery of Products on call and there is no agreement on a period for calling, the Seller will be entitled, if not all Products to be delivered have been called within three months, to demand that the Buyer specify in writing a period within which the total quantity will be called, which demand the Buyer will be obliged to comply with within eight days of the date of the demand. The period to be set by the Buyer after a demand must not exceed three months.

## **7. Retention of title**

- 7.1. The Seller retains the title to all Products it has delivered to the Buyer under any Agreement and to Products yet to be delivered until the purchase price for all such Products under any Agreement has been paid in full. If the Seller performs work for the benefit of the Buyer under this Agreement(s) which is payable by the Buyer, the aforementioned retention of title will apply until the Buyer has also paid the Seller's claims in full. The retention of title also applies to those claims that the Seller may acquire against the Buyer on account of failure on the part of the Buyer to fulfil any of its obligations towards the Seller under the aforementioned agreement.
- 7.2. Products delivered by the Seller under a retention of title pursuant to Article 7.1 may not be pledged or otherwise encumbered by the Buyer, may not be sold by the Buyer – not even in the normal course of business – and may never be used as a means of payment.
- 7.3. The Buyer is obliged to keep the Products delivered under a retention of title with the necessary care and as the Seller's recognisable property. The Buyer is obliged to insure the Products against fire, explosion and water damage as well as theft for the duration of the retention of title and to provide the Seller with a copy of the insurance policies and proof of payment of the premium due at the Seller's request.
- 7.4. If third parties seize the products delivered under a retention of title or wish to establish or assert rights to them, the Buyer will be obliged to notify the Seller as soon as possible.
- 7.5. If the Buyer fails to fulfil its payment obligations towards the Seller or if the Seller has good reason to fear that the Buyer will fail to fulfil those obligations, the Seller will be entitled to take back the goods delivered under a retention of title on its own authority and with no liability whatsoever towards the Buyer. The Buyer hereby unconditionally and irrevocably authorises the Seller, its employees and third parties engaged by the Seller to enter the Buyer's premises in order to repossess the Products. This will apply without prejudice to the Seller's right to compensation for damage, loss of profit and interest and the right to terminate the Agreement without further notice of default by means of a Written notification.

## **8. Invoicing and payment**

- 8.1. The Seller is entitled to invoice after each Delivery or partial delivery.

- 8.2. The Buyer is obliged to pay the invoiced amount no later than 30 days after the invoice date, without any deduction, discount or setoff. This payment term is a strict deadline. The Buyer is not entitled to invoke suspension.
- 8.3. The price charged will be immediately due and payable if the Buyer files for bankruptcy or is declared bankrupt, the Buyer requests or obtains a (provisional) moratorium, the Buyer is declared subject to a debt restructuring arrangement under the Dutch Debt Restructuring (Natural) Persons Act, all or part of the Buyer's goods are seized, the Buyer dies or is dissolved, the Buyer is placed under guardianship or administration, or if, after the Agreement has been concluded, the Seller becomes aware of other circumstances which give the Seller reason to fear that the Buyer will not meet its obligations.
- 8.4. As soon as the payment term has expired, the Buyer will owe the Seller the following on the principal due, including VAT: (i) 1% interest per month, (ii) compensation for the extrajudicial collection costs at least equal to 15% of the principal sum due including VAT, subject to a minimum of €200, and, if applicable, (iii) compensation for the full judicial costs (expressly including lawyer's fees).
- 8.5. The Seller is at all times entitled to demand security from the Buyer for the performance of its (payment) obligations. The Seller is at all times entitled to suspend its obligations under the Agreement until the security required by the Seller has been provided by the Buyer.

## **9. Warranty, complaints and claims**

- 9.1. The Seller guarantees that the Products delivered have the properties – subject to the Articles 9.2, 9.3, 9.5 and 10 – that the Buyer may expect on the basis of the Agreement and on the basis of the manufacturer's warranty of the Product in question.
- 9.2. The Buyer cannot derive any rights from guidelines, data, calculations, practical experience, laboratory tests and recommendations provided by the Seller with regard to quality, properties, resistance and durability. These are based on information provided by manufacturers or suppliers, unless expressly included in the Agreement.
- 9.3. During storage the Products must be protected by the Buyer against climatic conditions such as UV radiation. If the Product has a hallmark, for example a KOMO hallmark, the Buyer must also comply with the regulations set out therein.
- 9.4. Unless agreed otherwise, delivered and accepted Products will not be taken back.
- 9.5. A delivered Product is not defective in case of technically unavoidable deviations, quality and/or properties and in case of differences in colour smaller than DELTA 1.3 in successive deliveries, or samples supplied. Furthermore, there is no question of a defect in the event of deviations with regard to colour or in the event of minor deviations, such as in quality, colouring, transparency and the like compared to samples. The Seller is not liable for defects that are wholly or partially the result of any government regulation concerning the nature or quality of the materials used.
- 9.6. The Buyer is obliged, upon or immediately after taking delivery of the Product, to examine whether the Product delivered corresponds to the Agreement and, in particular, to check its soundness and condition. If, during this examination, the Buyer discovers that the Product delivered does not comply with the Agreement, the Buyer must notify the Seller of this in writing within five days of receipt. If this period is exceeded, any claim of the Buyer against the Seller in respect of non-conformity will lapse. With regard to the completeness of the delivery, Article 6.3 of these General Terms and Conditions applies.
- 9.7. The Buyer must at all times give the Seller the opportunity to assess the filed complaints in their entirety, failing which any right regarding non-conformity lapses.

- 9.8. In the event of a breach of the warranty as referred to in Article 9.1, the Seller's liability is limited to replacing or repairing the Product in question free of charge, or to refunding the price charged for that Product, to be decided at the Seller's discretion. In the case of repair, only the function will be restored and not the aesthetic value.
- 9.9. Without prejudice to the relevant provisions elsewhere in these General Terms and Conditions, all claims under the guarantee will also lapse if (i) the Buyer is in default of payment or otherwise fails to perform any obligation under the Agreement, (ii) the defect results from inexpert use, insufficient maintenance, normal wear and/or damage or from an act or omission by the Buyer in violation of the (product) information, (product) advice, (directions for use and/or processing), guidelines and/or (safety) instructions provided by the Seller, (iii) the Buyer carries out or has third parties carried out repairs or changes to the Product, and (iv) there is a case of accession, (improper) mixing or specification of the Product.

## **10. Permissible tolerances**

- 10.1. The deviations from the specifications of the Products stated in the Agreement, as referred to in Articles 10.3 through 10.6, are permissible both upwards and downwards and correspond with the Agreement. If the Buyer prescribes a minimum or maximum quantity, the permissible deviations are doubled.
- 10.2. In assessing whether the permissible deviations have been exceeded, the average of the total quantity delivered in one type, quality, colour and design will serve as a criterion. For properties other than those for which permissible deviations are stated below, the deviations allowed in previous deliveries and, in the absence thereof, the usual deviations will be permissible.
- 10.3. The permissible deviations from the agreed quantity and/or numbers for unprinted specials, irrespective of the number, are 10%.
- 10.4. The permissible deviations from the agreed quantity and/or numbers for printed specials, irrespective of the number, amount to 15%.
- 10.5. The permissible deviation in the agreed format is 5% both in length and in width. The permissible deviation in the agreed thickness is 10%.
- 10.6. Deviations in colour and print quality are permissible as long as they are due to manufacturing inaccuracies that are generally accepted as being unavoidable in the production process.
- 10.7. During the manufacturing process, the standard roll length of the Product may change, which may cause the roll length to be shorter than indicated by the Seller. The minimum roll length is 10m<sup>1</sup>.

## **11. Force majeure**

- 11.1. Force majeure within the meaning of Section 6:75 of the Civil Code on the part of the Seller will be deemed to be the case if the Seller is prevented from fulfilling its obligations under the Agreement or the preparation thereof as a result of circumstances beyond its reasonable control. Force majeure will in any event include: (i) late delivery by suppliers to the Seller, (ii) defectiveness of goods, equipment, software or materials from third parties which the Seller uses, (iii) government measures, (iv) power failure, (v) war, (vi) sit-down strike, (vii) strike, (viii) general transport problems, (ix) outbreaks of disease and (x) the unavailability of one or more members of the Seller's staff for whatever reason.
- 11.2. The Seller is not obliged to fulfil any obligation during the period in which the Seller is prevented from fulfilling its obligations due to force majeure. An agreed delivery period will be extended by this period.

11.3. Not until the term of delivery is delayed by more than three months due to force majeure will both the Seller and the Buyer be authorised to terminate the Agreement partially for the non-performed part, without the Seller and the Buyer mutually being liable for any compensation for whatever reason.

## **12. Intellectual property rights**

12.1. The intellectual property rights of the Seller to all items that the Seller provides to the Buyer under the Agreement between the Seller and the Buyer, including in any case drawings, images, calculations, designs, processes, models, moulds, plates and domain names (which the Buyer has registered for the purpose of marketing the Seller's products) remain vested in the Seller and may only be used by the Buyer for the performance of the Agreement between the Seller and the Buyer. At the end of the Agreement, the relevant documents and information will be returned to the Seller or destroyed at the Seller's request.

12.2. If the performance of the Agreement between the Seller and the Buyer entails the establishment of any intellectual property rights, the intellectual property rights, including copyright, will be vested in the Seller. Insofar as the intellectual property rights are vested in the Buyer by law, the Buyer will transfer those intellectual property rights to the Seller in advance and, if necessary, the Buyer will cooperate in this transfer and, furthermore, authorise the Seller irrevocably in advance to do everything necessary to ensure that the intellectual property rights are vested in the Seller. To the extent permitted by law, the Buyer waives any personality rights that remain vested in the Buyer or the Buyer undertakes not to exercise those personality rights in the course of trade.

12.3. If the Seller grants the Buyer a right of use, this is always on the basis of a non-exclusive and non-transferable licence, which is limited to the agreed use. In the absence of a previously agreed period of use, the right of use of the Seller's intellectual property rights is in any case limited to the term of the Agreement between the Seller and the Buyer, or to the duration during which the Buyer purchases products from the Seller. A licence from the Seller is at any time terminable with immediate effect without the Seller being liable for any compensation to the Buyer.

12.4. Following a termination, annulment or cessation of a long-term commercial relationship between the Buyer and the Seller, the Buyer will, at the Seller's request, ensure that no economic relationship is established between the Buyer and the Seller. To this end, the Buyer will perform all necessary acts, including but not limited to the following:

- a) The cessation of the use of the Seller's distinguishing assets in the course of business, such as a domain name of the Buyer;
- b) The cessation of the use and transfer of a domain name, trade name or trademark containing a distinguishing feature of the Seller to the Seller;
- c) Avoiding confusing advertising messages, such as the use of distinguishing marks that correspond to a distinguishing mark of the Seller;
- d) Delivering goods on which a distinguishing mark of the Seller is displayed, at the same price at which the Buyer purchased such goods from the Seller.

12.5. All non-publicly accessible information regarding the business process of the Buyer and the Seller is considered confidential information. The Buyer and the Seller will not share such confidential information with third parties, nor will they use it for their own business operations, unless it is necessary for the performance of an obligation between the Buyer and the Seller.

12.6. In the event of a breach of Articles 12.1, 12.2, 12.4 and 12.5, the Buyer will owe the Seller a penalty of €50,000.00 for each breach, without any notice of default being required, without prejudice to the Seller's right to claim full compensation plus interest and costs. Any penalty paid or

owed will not reduce any compensation due plus interest and costs. The Buyer and the Seller hereby explicitly deviate from the provisions of Section Book 6:92(2) of the Dutch Civil Code.

### **13. Liability and indemnification**

- 13.1. The Seller explicitly disclaims any liability and/or strict liability for direct loss, indirect loss, consequential loss, trading loss, loss of profits, missed savings, reduced goodwill, loss due to business interruption, corruption or loss of data, damage to crops and all other forms of direct and/or indirect loss or damage caused by the Seller, its employees, auxiliary persons it engages and/or its Products, unless the loss or damage is the result of intent or deliberate recklessness.
- 13.2. Insofar as the exclusion of liability in Article 13.1 cannot be upheld, the compensation will be limited to once the invoiced amount (exclusive of VAT) for the work from which the liability arises or at least in connection with which the liability arose. Compensation for damage will in any case be limited to the amount paid out under the Seller's liability insurance policy in the case in question, plus the amount of the excess payable by the Seller under the applicable insurance policy in the case in question.
- 13.3. Upon request, the Buyer will indemnify the Seller against all claims against the Seller by third parties in respect of any facts for which liability is excluded under these General Terms and Conditions. Furthermore, upon demand, the Buyer will fully indemnify the Seller against any third-party claims on account of product liability as a consequence of a defect in a product of the Buyer of which one or more of the Seller's Products form part (e.g. as a result of (improper) mixing, accession or specification).

### **14. Privacy**

- 14.1. If the Seller or the Buyer obtains personal data provided by the other during the performance of the Agreement and they process this personal data, they will process the personal data in a proper and careful manner and will comply with the legal regulations under the General Data Protection Regulation.
- 14.2. If the Seller or the Buyer is regarded as a processor within the meaning of the General Data Protection Regulation, the Seller and the Buyer will conclude a written data processing agreement that complies with the provisions of the General Data Protection Regulation.
- 14.3. The Seller and the Buyer will inform each other within five (5) working days of any request and/or complaint from the supervisory authority or the data subject with regard to the personal data processed in the performance of the Agreement. The Seller and the Buyer will give each other the cooperation required to comply with the requests of the data subjects or the supervisory authority.
- 14.4. The Buyer indemnifies the Seller against the administrative sanctions, repair sanctions and punitive sanctions imposed on the Seller in the context of processing operations carried out by the Seller in the performance of the Agreement.

### **15. Termination**

The Agreement may be annulled by the Seller with immediate effect and without default of the Buyer by means of a Written notice to the Buyer if:

- a) the Buyer files for bankruptcy or is declared bankrupt;
- b) the Buyer applies for or obtains a (provisional) moratorium;
- c) the Buyer is declared subject to a debt restructuring arrangement under the Dutch Debt Restructuring (Natural) Persons Act;

- d) all or part of the Buyer's goods are seized;
- e) the Buyer dies;
- f) the Buyer is dissolved;
- g) the Buyer is placed under guardianship or administration;
- h) after the Agreement has been concluded, the Seller becomes aware of other circumstances which give the Seller reason to fear that the Buyer will not meet its obligations;

all without prejudice to the Seller's right to claim compensation from the Buyer.

#### **16. Transferability of rights and obligations**

- 16.1. The Client is not permitted to transfer any claims against the Seller, for whatever reason, to a third party. Such claims are expressly not transferable. This clause has effect under property law within the meaning of Section 3:83(2) of the Dutch Civil Code.
- 16.2. The Buyer is not permitted to transfer any obligation under the Agreement and/or these General Terms and Conditions to a third party without the prior written approval of the Seller.

#### **17. (Partial) nullity or voidability**

Should a provision in these General Terms and Conditions be void or voidable, this will not mean that these General Terms and Conditions are void or voidable in their entirety or that any other provision thereof is (partially) void or voidable. If any provision in these General Terms and Conditions should be void or voidable (and subsequently annulled), it will be replaced by a valid provision by the Seller that most closely approximates the purport of the void or annulled provision.

#### **18. Loss of rights, applicable law and choice of forum**

- 18.1. Insofar as not provided otherwise in these General Terms and Conditions, all rights of claim of the Buyer against the Seller will in any event expire one year after the day on which the right of claim arose, unless the claim is brought before the competent court within this period.
- 18.2. All legal relationships between the Seller and the Buyer are solely governed by Dutch law. The applicability of the Vienna Sales Convention (CISG) is expressly excluded.
- 18.3. Any disputes that may arise as a result of relationships between the Seller and the Buyer that are governed by these General Terms and Conditions will solely be brought before the competent District Court of Gelderland, location Zutphen. Notwithstanding the foregoing, the Seller has the right to bring a dispute before the competent court under the Code of Civil Procedure or under the applicable European Regulations. If the Buyer and the Seller have agreed to arbitration in the Agreement, the arbitration will take place in accordance with Dutch law only.