

General conditions of sale, delivery, assembly and maintenance NVKL

issued by the *Nederlandse Vereniging van ondernemingen op het gebied van Koudetechniek en Luchtbehandeling (NVKL)*, filed with the court registry of the District Court of The Hague on 10 January 2023 under number 4/2023.



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Article 1 General

1. If these terms and conditions form part of offers and agreements to perform deliveries and/or services by a supplier for a customer, all provisions of these terms and conditions will apply between these parties, in so far as these have not been deviated from by an express written agreement between the parties. Any reference by the customer to his own purchasing or other conditions is expressly rejected by the supplier.
2. In these terms and conditions, the following terms will have the following meanings:
 - product: the performance(s) carried out by the supplier for the customer, such as delivery of goods, assembly of goods delivered by the supplier or otherwise, contracting of work, maintenance, repair and services, such as advice and inspection;
 - good: a material object, including any software contained therein;
 - software: software exclusively included in the delivered good;
 - supplier: the enterprise in the field of refrigeration and air conditioning that is party to any agreement for the delivery of products, i.e. the delivery of goods and other performances, such as assembly, installation, repair, inspection or maintenance, including the enterprise that refers to these terms and conditions in its offer;
 - customer: counterparty or counterparties to the agreement referred to above, other than a consumer;
 - written, in writing: by means of a document signed by both parties or by letter, email message, telefax and by any other means agreed by the parties, other than oral;
 - additional work: any performance by the supplier in consultation with the customer, whether in writing or not, in addition to the agreement;
 - price: the price applicable to the product according to Article 4.

Article 2 Offer

1. Any offer made by the supplier is non-binding and may be withdrawn by no later than three working days after acceptance.
2. Each offer is based on performance of the agreement by the supplier under normal conditions and during normal working hours.

Article 3 Agreement

1. Without prejudice to Article 2, paragraph 1, the agreement is concluded if the acceptance is in accordance with the offer. If the acceptance deviates from the offer, the agreement is only concluded after the supplier has expressly accepted these deviations.
2. If it has been agreed to deliver and calculate in instalments, each part will, in so far as the contrary does not ensue from any provision, be regarded as a separate agreement, in particular with regard to the provisions on delivery time, liability and payment.
3. Data mentioned in product documentation, illustrations, drawings, size and weight specifications and suchlike are only binding if and in so far as they are expressly included in an offer or order confirmation from the supplier or in a contract signed by the parties.
4. Verbal promises/arrangements will bind the supplier only in so far as they have been made by an employee authorised to represent the supplier or confirmed in writing by such an employee.

Article 4 Price

1. Unless otherwise agreed in writing, the agreed price is exclusive of turnover tax and other government charges applicable to the sale and delivery and based on delivery Ex Works according to the Incoterms in force on the date of offer. "Factory" means the premises of the supplier, as designated by the supplier. For delivery Ex Works, the price is calculated excluding packaging, unless otherwise agreed.
2. If, after the date of conclusion of the agreement, one or more of the cost price factors is increased - even if this occurs as a result of foreseeable circumstances - the supplier is entitled to increase the price accordingly.
3. The supplier may charge for additional work separately as soon as the amount to be charged for it is known to him. For the calculation of additional work, paragraphs 1 and 2 apply *mutatis mutandis*.
4. Costs of loading, unloading and transport of raw materials, semi-finished products, models, tools and other goods made available by the customer are not included in the price.
5. If it has been agreed that assembly of the product by the supplier takes place, the price will be calculated including assembly, excluding the costs mentioned in Article 7, paragraphs 3 and 5.

Article 5 Intellectual property/secretcy

1. All intellectual property rights to the product, its design and the drawings, calculations, descriptions, technical documents, models, tools and the like made for design, production and use of the product are vested in the supplier or, as the case may be, in a third party that has licensed the supplier to use these rights. This also applies if any of these has been developed specifically for the customer, unless otherwise agreed in writing. The customer acquires a non-exclusive, time-unlimited, transferable right to use these intellectual property rights, but only for the delivered product and subject to any limitations in underlying licences granted by third parties. The supplier is not obliged to provide the customer with source code or updates for software.
2. Technical, commercial and financial information and information marked

as confidential or which by its nature should be regarded as confidential, disclosed by one party in writing or orally to the other party, will be treated as confidential by the other party. The information will therefore not be used by a party for any purpose other than that for which it was provided without the written consent of the other party. The information may not be reproduced or transferred, communicated or disclosed to any third party. To the extent it is no longer required for the use of the product, the information will be returned to the supplier by the customer at the supplier's first request and, where applicable, deleted from digital files.

Article 6 Delivery time

1. If the parties have agreed on a specific period for delivery, this period starts as soon as the agreement has been concluded and all conditions to be fulfilled by the customer prior to the start of the supplier's performance of his obligations have also been fulfilled by the customer, such as provision to the supplier of necessary documents and data, obtaining permits, carrying out necessary formalities and payment of an amount due in advance. If, instead of a deadline, a specific delivery date, week or month has been agreed, it will be reasonably rescheduled.
2. The product is deemed delivered for delivery purposes when, if acceptance tests have been agreed at the supplier's business, it is ready for these tests and in other cases when the good is ready for dispatch and the customer has been notified of this in writing and, in the case of performance other than delivery of a good, when the performance has been delivered.
3. The delivery time is based on the working conditions prevailing at the time the agreement is concluded and on timely delivery of the goods and/or services ordered by the supplier for the execution of the work. If a delay arises through no fault of the supplier as a result of changes in said working conditions or because goods and/or services ordered in time for the execution of the work are not delivered on time, the delivery time will be extended to the extent necessary.
4. If performance of the agreement is delayed due to an act or omission by the customer or due to circumstances attributable to the customer, the supplier may extend the delivery time by a period that is necessary, all circumstances considered. This also applies if the cause of the delay does not occur until after the agreed delivery time.
5. If interim changes are made to the agreement or its performance is suspended by the customer, the delivery time will be extended by at least the duration of the additional work resulting from by these changes or of the suspension, without prejudice to any other rights and claims of the supplier.
6. Merely exceeding the assembly deadline will not cause the supplier to be in default by operation of law. Further notice of default is always required for this purpose.
7. Exceeding the delivery time does not entitle the customer to terminate the agreement in whole or in part or to claim compensation. However, if this overrun exceeds 16 weeks or will exceed 16 weeks according to the supplier's notification, the customer may terminate the agreement by written notification to the supplier. The customer is then entitled, where applicable, to reimbursement of the part of the price already paid and to compensation for the damage suffered by him, up to a maximum of 15% of the price. If partial delivery has already taken place, the agreement can only be partially terminated after 16 weeks, namely for the part that has not yet been delivered, unless the part already delivered is not independently usable for the customer. In case of partial dissolution, the customer will be entitled, where applicable, to reimbursement of the part of the price relating to the undelivered part and to compensation. For such compensation, the aforementioned maximum of 15% will in that case be calculated on the part of the price relating to the undelivered part. If exceeding the delivery time is due to force majeure, Article 14 applies.
8. If the customer remains in default of taking up the product after notice of default, the supplier is entitled to charge the customer for the resulting costs and damage, without prejudice to the supplier's rights under Article 15. The customer will still be obliged to pay the price as if delivery had taken place according to the agreed delivery time.

Article 7 Assembly

1. If it has been agreed that the supplier provides the assembly of a good, the customer is responsible for the correct execution and timely availability of all facilities, provisions and conditions necessary for the assembly of the good and the proper functioning of the good in its assembled state.
2. In any case, the customer will ensure at his own expense and risk that:
 - a) supplier's personnel can start the work in accordance with the agreed schedule and work during normal working hours. In so far as the supplier deems it necessary, work may also be carried out outside normal working hours, provided that this is reported to the customer in writing within a reasonable period of time;
 - b) he informs the supplier in writing and in good time before the start of assembly of all safety regulations applicable at the place of assembly;
 - c) assembly can be carried out in a healthy and safe environment;
 - d) all necessary safety measures are taken before starting assembly and are maintained during assembly;
 - e) suitable accommodation and/or all facilities required under government regulations, the agreement and usage are available for the supplier's personnel;
 - f) the supplier's personnel can use proper sanitary facilities;

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- g) all necessary auxiliary personnel, cranes, lifting and hoisting equipment, transport and auxiliary equipment, machinery, operating materials (such as fuels, oils, greases, gas, water, electricity, steam, compressed air, heating and lighting) and the normal measuring and testing equipment for the customer's business will be available in good time at the place of assembly;
 - h) sufficient office space is available at the assembly site for the supplier;
 - i) sound and adequately secured digital infrastructure and internet facilities are available as necessary;
 - j) sufficient storage space is available to protect against theft, loss and damage of the tools and equipment intended for assembly and the personal property of the supplier's personnel;
 - k) the access roads to the assembly site are suitable for the necessary transport of the good to be assembled and the supplier's equipment.
 - l) at the start of and during assembly, the products dispatched are in the right place.
3. Damage and costs arising for the supplier and/or the customer due to not or not timely fulfilling one of the obligations mentioned in this article, are for the customer's account.
 4. If the supplier provides help and assistance - of whatever kind - during the assembly without having been commissioned to do so, this will take place at the customer's risk.
 5. Costs incurred by the supplier due to unworkable weather, are for the account of the customer.

Article 8 Inspection and acceptance tests

1. The customer will inspect the product no later than seven days after delivery as referred to in Article 6, paragraph 2. If assembly has been agreed upon, the customer will inspect the proper execution thereof no later than five days after assembly. If the applicable deadline has passed without written and specified notification of justified complaints, the product is deemed to have been accepted.
2. If acceptance tests have been agreed upon, the customer will, after the delivery referred to in Article 6, paragraph 2, give the supplier the opportunity to make the necessary preparations and make the changes the supplier deems necessary. The supplier will be given the opportunity to take preliminary samples. The customer will ensure timely provision of the auxiliary equipment, auxiliary and operating materials, water, energy, heating and lighting necessary for this purpose, all at his expense and risk. The acceptance tests will be held in the presence of the customer immediately after the supplier's request to do so. The costs of acceptance tests are for the account of the customer. However, the supplier bears the costs of his own personnel and his other representatives. If the acceptance tests have been carried out without a justified complaint or if the customer does not fulfil the aforementioned obligations, the product will be deemed to have been accepted.
3. For the acceptance tests and the preparations and changes referred to in paragraph 2, the customer will make the necessary facilities, support and materials, including those referred to in Article 7, paragraph 2, under g, available to the supplier in sufficient quantity, on time and free of charge at the location specified by the supplier. If the customer does not comply with the above, the product is deemed to have been accepted.
4. The supplier will prepare a report of the acceptance tests to be sent to the customer. If the customer was not represented at the tests, having been invited to do so in good time and in writing by the supplier, the test report will be deemed by him to be an accurate representation.
5. If requested by the supplier, the customer will sign a takeover protocol as proof that the goods have been delivered complete and ready for operation, without prejudice to the provisions of Article 12.
6. If the acceptance tests show that the product does not comply with the agreement, the supplier will eliminate the shortcomings as soon as possible. If the customer requests this in writing, new acceptance tests will be carried out subsequently in accordance with paragraphs 2-4.
7. In case of minor shortcomings that do not affect the proper functioning of the product, the product will be deemed accepted regardless of these shortcomings. The supplier will eliminate these shortcomings as soon as possible.
8. The customer is not authorised to use the product or any part thereof before acceptance. If the customer does so, without the supplier's written consent, the product will be deemed accepted.
9. Without prejudice to Article 12, the acceptance in accordance with the preceding paragraphs excludes any claim by the customer based on a shortcoming in the supplier's delivery obligation.

Article 9 Risk transfer

1. As soon as the product is considered delivered within the meaning of Article 6, paragraph 2, the customer will bear the risk for all damage that may be caused to or by this product, except in so far as the damage can be attributed to intent or conscious recklessness of the supplier's employees belonging to the operational management. This also applies in case the assembly is carried out by the supplier.
2. The method of transport, packaging, etc., if no further instructions have been given by the customer to the supplier, will be determined by the supplier in all reasonableness, without him bearing any liability for this and without him being obliged to take back the packaging, unless taking back the packaging is mandatory under the Packaging and Packaging Waste Directive 94/62/EC.

Article 10 Retention of title

1. The supplier will retain ownership of all goods delivered by him to the customer until the amount due, including interest and costs, for all such goods has been paid in full. If the supplier has carried out work for the customer as part of the delivery of goods, the retention of title will apply until the customer has also paid the claims for this work, also including interest and costs. Retention of title also applies to all claims that the supplier may obtain vis-à-vis the customer due to the customer's failure to fulfil one or more of his obligations vis-à-vis the supplier under the said agreements.
2. As long as the ownership of the delivered goods has not been transferred to the customer, he may not pledge the goods or grant a third party any further

3. right to them, subject to the provisions of the sixth paragraph of this Article. With regard to delivered goods the ownership of which has been transferred to the customer by payment and which are still in the hands of the customer, the customer will, as soon as the supplier indicates that he wishes to do so, cooperate in establishing rights of pledge as referred to in Section 3:237 of the Dutch Civil Code as additional security for claims, other than those referred to in Section 3:92(2) of the Dutch Civil Code, which the supplier may then have against the customer for whatever reason.
4. The customer is obliged to keep the goods delivered under retention of title with due care and as recognisable property of the supplier. The customer is obliged to adequately insure the goods against loss and damage, such as against damage caused by fire, explosion and water, for the duration of the retention of title and to make the policies of this insurance available to the supplier for inspection on the latter's first request. All claims of the customer against insurers of the goods by virtue of the aforementioned insurance policies will, as soon as the supplier indicates that he wishes to do so, be pledged by the customer to him in the manner indicated in Section 3:239 of the Dutch Civil Code, as additional security for the supplier's claims against the customer.
5. If the customer fails to comply with his payment obligations vis-à-vis the supplier or if the supplier has good reason to fear that he will fail to comply with those obligations, the supplier is entitled to take back the goods delivered under retention of title. After repossession the customer will be credited for the market value, which can under no circumstances be higher than the original purchase price, less the costs pertaining to the repossession.
6. The customer is permitted to sell and transfer the goods delivered under retention of title to third parties in the normal course of his business. When selling on credit, the customer is obliged to stipulate a retention of title from his customers equivalent to the provisions of this article.
7. The customer undertakes, as long as the ownership of the delivered goods has not been transferred to the customer, not to assign or pledge any claims he obtains against his own customers to third parties without the prior written consent of the supplier. Furthermore, the customer undertakes to pledge the aforementioned claims, as soon as the supplier expresses a wish to that effect, to him in the manner indicated in Section 3:239 of the Dutch Civil Code as additional security for his claims for whatever reason whatsoever against the customer.

Article 11 Payment

1. Payment of amounts due to the supplier must, unless otherwise agreed, be made within 30 days of delivery.
2. For amounts above €25,000, the payment schedule, unless otherwise agreed, is as follows:
 - 40% on the order being commissioned;
 - 50% on delivery;
 - and the remainder (10%) within 30 days of delivery.
3. Payment of additional work will take place no later than seven days after it has been invoiced to the customer.
4. All payments will be made without deduction, suspension or set-off in the manner determined by the supplier.
5. If the customer fails to pay on time, he will be in default by operation of law and the supplier will be entitled, without notice of default being necessary, to charge him interest from the due date at a rate of 3 points above the statutory interest rate for commercial contracts applicable in the Netherlands, as referred to in Section 6:119a and Section 6:120(2) of the Dutch Civil Code, and all judicial and extrajudicial costs.
6. Payments will first be applied to reduce the extrajudicial and judicial costs, then to reduce the interest and only then will be applied to reduce the invoice amounts due, whereby the oldest invoice will first be applied.

Article 12 Product defects

1. The product must comply with the agreement. The supplier is obliged to remove any deviation thereof (hereinafter referred to as: "defect(s)") arising from incorrect or faulty design or material or poor workmanship, in accordance with this Article 12. Unless otherwise agreed, an infringement of intellectual property rights of a third party applicable in the Netherlands is also considered a defect. The obligation to remove the defect only applies to defects in the product that are not observable upon inspection and (if agreed) acceptance tests, which the customer proves to have occurred within 12 months in the case of goods and within six months after delivery in accordance with Article 6, paragraph 2 in the case of another performance.
2. The products must comply with the regulations applicable in the Netherlands with regard to operation, transport and safety on the day of conclusion of the agreement. Should amended statutory regulations come into force between the date of conclusion of the agreement and delivery and commissioning, then the product will be adapted to these new regulations if possible. Any associated costs are for the account of the customer.
3. Unless expressly agreed otherwise in writing, the supplier's obligations under paragraph 1 are limited to deliveries within the Netherlands.
4. In case of assembly of a good delivered by the supplier, the period of 12 and six months, respectively, referred to in paragraph 1 for the delivered good respectively for its assembly will start on the day the assembly is completed by the supplier. This period ends in any case 18 months after delivery of the good in accordance with Article 6, paragraph 2.
5. Defects in a delivered good will be removed by the supplier by repair or replacement of the defective part, whether or not at the supplier's premises, or by sending a repaired part or a part for replacement, all at the supplier's discretion. After the removal of the defect, the supplier will be equally obliged to remove defects in the repaired or replacement part for six months. Any liability for defects in the delivered good will in any case lapse 18 months after its delivery in accordance with Article 6, paragraph 2 or, in case of applicability of paragraph 4, 24 months after such delivery.
6. Defects in the assembly of a good delivered by the supplier will be eliminated by the supplier by carrying out repair work. After the elimination of the defect, the supplier will be equally liable for defects in the repair work for six months.

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- Any liability for defects therein will in any case lapse 24 months after delivery of the good in accordance with Article 6, paragraph 2.
7. Defects in maintenance, repair (if not performed pursuant to paragraph 5 or paragraph 6), assembly of a good delivered to the customer by a third party, overhaul, contracting work and similar work, will be eliminated by the supplier by redoing the work, in so far as it is defective. After redoing the work, the supplier is liable for defects in the repair work during six months. Any liability expires in any case 12 months after delivery in accordance with Article 6, paragraph 2.
 8. Defects due to infringement of intellectual property rights will, at the supplier's option, be removed by the supplier by:
 - acquisition of the customer's right of use;
 - such modification of the good that infringement no longer exists; or
 - replacement of the good with another good that does not infringe intellectual property rights.The supplier will be liable for any defects therein for six months after the said modification or replacement under the conditions set out in this article. In any event, any liability of the supplier for defects therein will lapse 18 months after the delivery of the good in accordance with Article 6, paragraph 2 or, if paragraph 4 applies, 24 months after such delivery.
 9. The goods to be repaired or replaced pursuant to this article, which are reasonably suitable for this, will be returned by the customer to the supplier at the latter's request. Transport costs and additional costs of disassembly and reassembly incurred by the supplier in removing defects are for the account of the customer.
 10. The supplier will not be liable for defects in inspections, consultancy and similar services.
 11. The supplier is not liable for defects that occur in or are wholly or partially the result of:
 - a) non-observance of operating and maintenance instructions or other than the intended normal use;
 - b) normal wear and tear;
 - c) (dis)assembly, repair or modifications by the customer or by third parties;
 - d) the application of a government regulation;
 - e) materials and goods already used in consultation with the customer.
 - f) materials and goods provided, for processing or otherwise, by or on behalf of the customer.
 - g) materials, goods, design, construction or working methods applied at the express instruction of the customer;
 - h) parts (including software) procured by the supplier from third parties, in so far as the third party is not liable vis-à-vis the supplier for them.

The supplier is not liable for damage to paint or chrome work, unless the damage is the result of quality and/or construction faults of other parts.
The supplier is further not liable for infringement of intellectual property rights resulting from the circumstance that:

 - i) the product is used outside the Netherlands;
 - j) the product is used in a different way than agreed;
 - k) the product is used in combination with equipment or software not supplied by the supplier
 - l) data provided by or on behalf of the customer have been used.
 12. If the customer does not, does not properly or does not timely comply with an obligation arising for him from any agreement concluded with the supplier, the supplier is not obliged to remove defects. If the customer proceeds to dismantle, repair or carry out other work on the product or has it done without the prior written approval of the supplier, any obligation of the supplier to remove defects will lapse.
 13. Defects must be reported to the supplier in writing as soon as possible after their discovery, but no later than 14 days after the expiry of the applicable liability period. If these deadlines are exceeded, any claim for these defects will lapse. Legal actions must be brought within one year of said notification on penalty of forfeiture of all rights.
 14. If the customer has made said notification and no defect is found for which the supplier is liable, the supplier is entitled to compensation of the costs incurred as a result of the notification.
 15. If the supplier replaces parts when removing defects, the replaced parts become the property of the supplier.
 16. If the customer claims that the supplier fails to fulfil an obligation mentioned in this article, the customer remains obliged to fulfil the obligations arising for him from any agreement concluded with the supplier.
 17. If the supplier has not remedied the defect within a reasonable time, the customer may set a final, reasonable deadline for doing so by written notification. If the supplier fails to comply with his obligations within the latter period, the customer may, at the supplier's expense, have the defect removed himself or by a third party, provided that the customer or the third party has the necessary expertise to do so. If the defect is thus successfully eliminated, the supplier will be released from all liability for the defect by reimbursing the reasonable costs incurred by the customer. These costs will not exceed 15% of the price of the product.
 18. If the defect is not removed in accordance with paragraph 15,
 - a) the customer is entitled to a discount on the price in proportion to the depreciation of the product. This discount will not exceed 15% of the price, or
 - b) if the defect is so serious that it significantly deprives the customer of his interest in the agreement for the product or an essential part of the product, respectively, the customer will have the right to terminate the agreement for the product or the essential part of the product, respectively, by written notification to the supplier. The customer will then be entitled to reimbursement of the price paid for the part for which the agreement is terminated. The customer is additionally entitled to compensation up to a maximum of 15% of the part of the price relating to the part of the product for which the agreement is terminated.

Article 13 Liability

1. Unless there is intent or conscious recklessness on the part of the employees belonging to the supplier's management and subject to the applicability of Article 6, paragraph 7 and Article 12, all liability of the supplier, regardless of

the legal basis, is excluded. The supplier is therefore not liable, among other things, for damage due to:

- non-delivery;
- liability vis-à-vis third parties;
- any wrongful act or omission of (employees and auxiliary persons of) the supplier;
- infringement of intellectual property rights, licences and other rights of third parties;
- damage or loss, from whatever cause, of raw materials, semi-finished products, models, tools and other goods made available by the customer;
- loss or corruption of data;
- loss of production and reduction of possibilities for use;
- loss of contracts and customers.

The supplier is furthermore not liable for lost profit and any consequential and indirect damage.

2. The customer is obliged to indemnify and hold the supplier harmless from and against all claims by third parties for compensation for damage in connection with the performance of the agreement.
3. Barring intent or conscious recklessness on the part of employees belonging to the supplier's management, the customer is obliged to indemnify the supplier against all damage resulting from the supplier's use of goods belonging to the customer.
4. The customer is liable for the structural part not delivered by the supplier and/or for the adverse consequences resulting from the condition of the soil and is obliged to compensate the supplier for any damage he may suffer as a result of the unsoundness of the structural part and/or the condition of the soil.

Article 14 Force majeure

1. In these general terms and conditions, force majeure means any circumstance beyond the supplier's control - even if foreseeable at the time the agreement was concluded - which permanently or temporarily prevents the supplier from performing the agreement or makes it unreasonably onerous, and, in so far as not already included, war, threat of war, civil war, riots, strikes, lock-outs, transport difficulties, import and export restrictions, government measures, fire, terrorism, epidemics and pandemics, natural disasters, extreme weather conditions, limited availability of energy, electricity failure, failure of the internet, computer network and telecommunication facilities, cybercrime and defects and delays in deliveries by suppliers as a result of circumstances mentioned in this paragraph.
2. If the supplier is temporarily unable to perform the agreement due to force majeure or only in a way that is unreasonably onerous for him, he has the right to suspend the performance of the agreement. After six months, if the force majeure situation still persists, either party will be entitled to terminate the agreement in whole or in part. Either party will furthermore be authorised to terminate the agreement in whole or in part if, after the force majeure situation has occurred, it is or becomes clear that fulfilment of the agreement by the supplier will be impossible or unreasonably onerous for more than six months.
3. In case of suspension and termination under paragraph 2, the supplier will not be obliged to pay compensation. The supplier will then be entitled to demand payment of the costs he has incurred for the (raw) materials, parts and other goods purchased, reserved, processed and manufactured by him in the performance of the agreement. In case of termination pursuant to paragraph 2, the customer is obliged to take up the said goods after payment of the said costs. If the customer fails to do so, the supplier will be authorised to store these goods at the customer's expense and risk or to sell or destroy them at the customer's expense.

Article 15 Suspension and termination

1. If there is good reason to fear that the customer is or will be unable or unwilling to fulfil his obligations and in case of bankruptcy, suspension of payments, shutdown, liquidation or full or partial transfer of the customer's business, the supplier has the right to require appropriate security for all contractual obligations (whether due or not) of the customer and, in anticipation thereof, to suspend performance of the agreement. Failure to provide such security within a reasonable period set by the supplier will entitle the supplier to terminate the agreement in whole or in part. The supplier has these powers in addition to his other rights under the law, the agreement and these terms and conditions.
2. If the customer does not, does not timely or does not properly fulfil an obligation under an agreement with the supplier, the supplier will be entitled to suspend the performance of the agreement and/or to terminate the agreement.
3. In case of suspension and termination in accordance with paragraphs 1 and 2, the supplier has the right to store the (raw) materials, parts and other goods purchased, reserved, processed and manufactured by him for the performance of the agreement at the customer's expense and risk. The supplier may also choose to sell or destroy these at the customer's expense. In case of suspension and termination in accordance with paragraphs 1 and 2, the supplier will be entitled to full compensation, but is not obliged to pay compensation himself. The supplier's damage will be fixed at 75% of the compensation due for the not yet performed (part of an) agreement, all without prejudice to the supplier's right to claim the actual damage resulting from the customer's shortcoming.
4. If the customer terminates the agreement without the supplier's prior written approval, he is obliged to pay the full price without notice of default being necessary, minus the costs saved by the supplier.

Article 16 Disputes

1. Disputes between the parties as a result of an offer, the conclusion or performance of an agreement or further agreement can be brought before the Disputes Committee (Geschillencommissie Koude, Klimaat en Grootkeuken, Postbus 90600, 2509 LP The Hague (www.degeschillencommissie.nl)) by both the supplier and the customer. The supplier and the customer may also each choose to take the dispute to the ordinary courts.
2. A dispute will only be considered by the Disputes Committee if the customer has first submitted his complaint to the supplier. If the complaint does not lead

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to a solution, the dispute can then be submitted to the Disputes Committee in writing or in another form to be determined by the Committee.

3. If the customer brings a dispute before the Disputes Committee, the supplier is bound by this choice. If the supplier wishes to bring a dispute before the court, he must ask the customer, in writing or in another appropriate form, to express whether or not he agrees to this within five weeks. In the absence of the customer's agreement within this period, the supplier will be free to take the dispute to the ordinary courts.
4. The Disputes Committee will rule in accordance with the provisions of the regulations applicable to it. The regulations of the Disputes Committee will be sent to the customer by the supplier upon request. The decisions of the Disputes Committee are made by way of a binding opinion. A fee is payable for the handling of a dispute.
5. Only the ordinary court or the above-mentioned Disputes Committee will be authorised to take cognisance of disputes.

Article 17 Applicable law

All agreements to which these conditions apply are governed by the law applicable in the Netherlands, to the exclusion of choice of law rules and conflict of laws rules of private international law. The applicability of the Vienna Convention on Contracts for the International Sale of Goods is excluded.

FURTHER PROVISIONS MAINTENANCE

The following provisions apply in addition to Articles 1 through 17. In case of conflict between Articles 1 through 17 on the one hand and the provisions below on the other, the latter will prevail.

Article 18 Definitions

In these further provisions, the following terms will have the following meanings:

- maintenance contract: the agreement obliging the supplier to carry out preventive maintenance on a good during the contract period.
- preventive maintenance: the performance of inspection/monitoring in accordance with the regulations of the F-Gases Regulation and the Ozone Regulation, such as checking a good for proper functioning and leak tightness to prevent loss of refrigerant; checking, testing and measuring electrical switchgear, control and safety equipment and readjusting or setting the good, if required.
- corrective maintenance: removing malfunctions and carrying out repairs to goods.

Article 19 Preventive Maintenance

1. Preventive maintenance is carried out during normal working hours. Normal working hours are defined as working days from 08:00 to 16:30, excluding weekends and generally recognised public holidays.
2. Any relocation or modification of the installation must be reported in writing to the supplier immediately by the customer. A modification or relocation of the installation may result in adjustment of the rates specified in the maintenance contract.
3. Pipes will only be serviced if they are located within sight. Internal cleaning of furniture(s) belonging to the installation is not part of preventive maintenance, nor is cleaning the evaporators and condenser(s) of the good.
4. After an inspection has been carried out, the customer will be informed by the supplier about the state of maintenance and operational reliability of the good by means of submission of a maintenance report.

Article 20 Preventive checks

The preventive checks required to be carried out in accordance with the applicable legislation and regulations will be notified to the customer in advance and in a timely manner, after which the customer will actually give the supplier the opportunity to carry out the relevant checks.

Article 21 Refrigerants

If an operation has been carried out with a refrigerant, a note to this effect will be made by the supplier in the logbook of the good in question. Refrigerants removed as part of preventive maintenance will be charged to the customer separately. After transfer of the removed refrigerants to the supplier, the supplier is then obliged to comply with the applicable statutory provisions.

Article 22 Corrective maintenance

Corrective maintenance work is outside the scope of the maintenance contract. Corrective maintenance will be carried out after receipt of a fault report from the customer or after the fault has been signalled by other means. Upon receipt of a fault report, necessary corrective maintenance will be carried out during normal working hours whenever possible.

Article 23 Free access

1. The supplier's service engineer must at all times have free and unobstructed access to the room where a good is set up. If free and unhindered access to a good is not possible or not allowed by the customer, the supplier is released from his obligation to carry out the agreed work, without prejudice to the obligation of the customer to pay the supplier the agreed price.
2. The supplier's service engineer must be able to start work immediately upon arrival and have the necessary working space available for this purpose. Waiting hours or delays due to a circumstance that cannot be attributed to the supplier may be charged to the customer.

Article 24 Exclusions

In any case, the maintenance contract does not include the performance of work related to:

- a. improper or injudicious use of the good or use for purposes other than those for which the good is intended;
- b. inadequate cleaning of furniture or cells, which may cause blockage by dirt from the water drain, resulting in the good no longer functioning adequately;
- c. an accident or other external causes or influences;
- d. abnormal physical or electrical load;
- e. modification or relocation of the good or the performance of maintenance by third parties.
- f. introduction of new statutory or other governmental measures that affect the nature or scope of the maintenance work;
- g. wear of the condenser or evaporator due to weathering caused by external influences;
- h. it being reasonably impossible to repair the good - at the discretion of the supplier - or if the capacity of the good is (or becomes) insufficient for the purpose for which the good is used.

Article 25 Payment and fulfilment

1. If and to the extent prepayment has been agreed, the subscription fee is payable on the first day of the contract period.
2. Payment of the subscription fee must be made within 14 days of the invoice date.
3. In case the customer is to some extent in default with regard to the fulfilment of his obligations, including payment of the subscription fee relating to the maintenance contract, on the basis of which the supplier has suspended his obligations, this right of suspension will also extend to reporting and carrying out preventive checks in accordance with the relevant legislation.

