

General Conditions of Sale

Article 1 Definitions

AMS: AMS Group B.V., a Netherlands limited liability company having its principal place of business at Asterweg 20 S3, 1031 HN Amsterdam, The Netherlands

Services: the services delivered or to be delivered by AMS

Customer: the counterparty or potential counterparty of AMS

Agreement: the agreement between AMS and the Customer

Conditions: these general conditions of sale of AMS

Goods: the goods delivered or to be delivered by AMS

Article 2 General

2.1 These Conditions are applicable to all offers, Agreements and other legal relationships whereby AMS acts as seller or potential seller of Goods and/or as provider or potential provider of Services.

2.2 Stipulations deviating from these Conditions or from an Agreement are only valid when made by means of an explicit written further Agreement.

2.3 In case of a conflict between the Netherlands text of these Conditions and any translation thereof, the Netherlands text shall be binding, unless the negotiations, offers and correspondence leading to an Agreement have all been done in another language in which these Conditions are translated and, in case an Agreement has been concluded, such Agreement has been drawn up in such other language, in which case the text of the Conditions in such other language are applicable.

2.4 Whenever "written" or "in writing" is used in these Conditions, it shall also mean by fax, e-mail or any other electronic medium.

Article 3 Offers and the conclusion of an Agreement

3.1 All offers by AMS are made without engagement.

3.2 If an offer contains a term for the acceptance thereof, such term does not bind AMS. Article 3.1 remains applicable in such case.

3.3 In deviation of Article 6:225 lid 2 of the Netherlands Civil Code, AMS is not bound by any deviations from AMS's offer contained in the acceptance thereof by the Customer, however small such deviations may be. In such case, the Agreement is deemed to be concluded on the terms and conditions as stipulated in AMS's offer, provided that AMS has always the right to honour one or more (or all) deviations proposed by the Customer.

3.4 All offers by AMS are, unless explicitly provided otherwise in the offer, based on the assumption that the Agreement will be executed during normal working hours and under normal working conditions. If the execution of the Agreement does not take place during normal working hours and/or under normal working conditions, the Customer is obliged to pay all extra costs in connection therewith.

3.5 AMS is at any time entitled to terminate negotiations with a Customer without any damages being due by AMS. Negotiations can be terminated by AMS without reason.

3.6 Insofar as the Customer acts in the framework of a profession or business, he waives his right for dissolution or rejection on the basis of Article 6:227c paragraph 2 of the Netherlands Civil Code.

3.7 AMS is not obliged to make inquiries at the Customer or any third party into the intended use of the Goods or the circumstances under which the Goods will be used.

Article 4 Delivery

4.1 Unless explicitly agreed otherwise in writing, all deliveries are made Ex Works (INCOTERMS 2000).

4.2 The Customer is obliged to accept delivery of the Goods and/or the Services at the moment on which such Goods and/or Services are being offered for delivery to him. The risk of all Goods and/or Services passes to the Customer as from that moment.

4.3 If a Customer rejects any Goods that are offered to him for delivery, AMS is entitled but never obliged to store (or arrange for the storage by a third party) such Goods or part thereof at the Customer's expense and risk.

The Customer agrees to reimburse AMS any and all costs connected with such storage and the related costs of transport at the first request of AMS.

4.4 If an Agreement contains a composed pricing, AMS is never obliged to deliver part of the Goods and/or render part of the Services against the corresponding price.

4.5 AMS is at all times entitled to deliver in consignments and to invoice such deliveries separately.

Article 5 Delivery Periods

Delivery dates provided by AMS shall only serve as an estimate and are never firm dates. AMS shall not be in default unless it has received a written notice of default specifying a reasonable time for delivery and has failed to comply within such specified time.

Article 6 Technical standards and requirements and regulations set by authorities

AMS shall not be responsible or liable for any damage if Goods and/or Services do not comply with technical standards and/or requirements and/or regulations by authorities or otherwise, unless such standards and/or requirements and/or regulations are explicitly specified in the Agreement. This provision also applies if AMS was aware of the intended use of the Goods and/or the circumstances under which the Goods will be used.

Article 7 Samples, models and intellectual property

7.1 Unless it has been explicitly agreed in writing otherwise, all samples and models provided by AMS to the Customer only serve as an indication, to which the Goods or Services do not necessarily need to conform. The Goods and/or Services to be delivered may deviate from the samples and models provided by AMS to the Customer.

7.2 If a Customer recommends, requests or prescribes the use or application of a certain model, design, pattern, scheme, text, drawing, calculation, image, (trade)mark, logo or the like, the Customer represents and warrants that such use or application does not infringe on any intellectual or industrial property right of any third party and the Customer shall hold harmless and indemnify AMS from and against any and all claims and damages in this respect.

7.3 If and insofar as it has not been explicitly agreed in writing otherwise, any and all intellectual and industrial property rights on drawings, models, designs, patterns, (trade)marks, pictures, texts, logos and other works, information and documents made by or on behalf of AMS pursuant to, in relation to or in the framework of an offer or Agreement shall only vest in AMS, regardless of the manner in which, by whom and where such drawings, models, designs, patterns, (trade)marks, pictures, texts, logos and other works, information and documents will be used, applied or stored. Such drawings, models, designs, patterns, (trade)marks, pictures, texts, logos and other works, information and documents remain, unless it has been explicitly agreed in writing otherwise, property of AMS. The Customer shall at all times respect the industrial and intellectual property rights of AMS.

Article 8 Prices

8.1 Unless it has been explicitly agreed in writing otherwise, all prices are in EURO and are based on delivery Ex Works (INCOTERMS 2000).

8.2 Unless it has been explicitly agreed in writing otherwise, all prices are exclusive of costs for transport, packaging, delivery, insurance and installation.

8.3 Unless it has been explicitly agreed in writing otherwise, all prices are exclusive of VAT and exclusive of all import and export taxes and all other possible levies and taxes. Customer shall reimburse AMS for any and all taxes and levies paid by AMS in respect of the Goods and/or Services.

8.4 AMS is entitled to pass all or part of possible price increases of raw, auxiliary and other materials, labour, insurance, exchange rates and other factors relevant to the Agreement which have occurred after the offer and/or the Agreement on to the Customer.

8.5 Possible extra costs resulting from amendments to the Agreement (including but not limited to amendments to the Goods and/or Services to be delivered or the delivery dates) are always for the account of the Customer, whether or not such extra costs were known at the time of the amendment and whether or not the Customer had been made aware of such extra costs at the time of the amendment.

8.6 In case of an order or extra order for Goods and/or Services that are identical to Goods and/or Services that have been or will be delivered pursuant to an earlier Agreement, the Customer cannot claim that such order or extra order shall be accepted on the basis of the prices stipulated in such earlier Agreement.

Article 9 Payment

9.1 Unless it has been explicitly agreed in writing otherwise, payment has to be made by the Customer within 14 days after the invoice date on one of the bank accounts mentioned in the invoice.

9.2 Payment by the Customer shall exclusively be made in the currency set out in the invoice.

9.3 Payment shall be made without set off, discount or suspension.

9.4 If payment has not been received by the due date, the Customer shall automatically be in default without any notice of default being required. As from that moment until payment in full, compound interest of 1% per month is due over the unpaid balance, unless the interest to be paid but for this Article 9.4 would be higher, in which case such higher interest is due. All of the foregoing is without prejudice to any other rights and remedies that AMS has on the basis of the Agreement, these Conditions and the law.

9.5 Any and all costs with respect to payment (including but not limited to costs with respect to the provision of security) shall be for the account and expense of the Customer.

9.6 In case of bankruptcy, suspension of payments or liquidation of the Customer or exceeding of the payment date of any invoice, all claims of AMS become immediately due and payable.

9.7 All extra-judicial costs, including but not limited to costs relating to demands for payment, costs for and relating to (settlement) negotiations and costs relating to the preparation of a possible judicial procedure, as well as all judicial costs made by AMS as a result of the Customer not or not timely complying with its obligations, are for the account and expense of the Customer. The Customer undertakes and agrees to reimburse AMS all such costs upon request.

9.8 Without prejudice to AMS's right to claim full compensation for the costs referred to in Article 9.7 and to claim the interest referred to in Article 9.4 and without prejudice to AMS's other rights and remedies on the basis of the Agreement, these Conditions and the law, in case of default of the Customer AMS is in any way entitled to the following amounts in connection with the collection by AMS of its claims, regardless of the actual costs made by AMS in respect of such collection and such following amounts are to be considered to be the minimum damage AMS shall suffer in such event:

Over the first € 6.500 of the amount due: 15%
Over the amount due between € 6.500 and €13.000: 10%
Over the amount due between € 13.000 and € 32.500: 8%
Over the amount due between € 32.500 and € 130.000: 5%
Over the amount due in excess of € 130.000: 3%

9.9 Payments by the Customer shall be deemed to have been made first to settle the costs referred to in Article 9.5, 9.7 and 9.8, thereafter to settle the interest referred to in Article 9.4 and finally to settle that part of the unpaid invoices as indicated by AMS, irrespective of any other instructions by or on behalf of the Customer.

Article 10 Security

In case AMS has good reason to believe that the Customer will not strictly or not timely fulfil all of its obligations vis-à-vis AMS, the Customer is obliged to provide at AMS' first request satisfactory security in a form requested or approved by AMS (including but not limited to a bank guarantee) and/or at AMS' first request replace or supplement existing security. If such security or extra security has not been provided within 7 days after AMS' request, all consequences of non-fulfilment of obligations come into effect without any further demand or notice being required.

Article 11 Retention of title

11.1 AMS retains title to Goods delivered or to be delivered, until the Customer has fulfilled all of its obligations with respect to all Goods and/or Services delivered or to be delivered under the Agreement, including but not limited to the obligations of the Customer relating to breach of contract. The property law aspects of retention of title that are intended to be exported, will be governed by the laws of the country of destination, unless AMS decides otherwise.

11.2 The Customer is not entitled to pledge or otherwise encumber the Goods of which AMS has retained title. Disposal of such Goods is only allowed in the ordinary course of business, whereby the Customer acts in its own name, but as mandatory for the account of AMS. The Customer shall immediately notify AMS in writing, if third parties exercise or vest rights (including but not limited to rights of attachment) to the Goods referred to under Article 11.1 or if the Customer knows or has reason to believe that third parties may exercise or vest such rights on such Goods.

11.3 If the Customer uses the Goods referred to under Article 11.1 to create new goods, such new goods are goods which have been created for AMS as owner and the Customer shall keep such goods for AMS, until the Customer has fulfilled all its obligations referred to under Article 11.1.

11.4 The Customer is obliged to take out sufficient insurance with respect to the Goods referred to in Article 11.1 and keep such Goods sufficiently insured against all possible risks. At the first request of AMS, the Customer shall submit the insurance policy for inspection to AMS.

11.5 In case the Customer fails to fulfil any of its obligations, AMS has the right to repossess the delivered Goods. The Customer herewith unconditionally and irrevocably authorises AMS and/or third parties designated by AMS to enter all of those premises which are necessary or conducive to be entered in connection with the exercise by AMS of its ownership and other rights. All costs relating to this exercise of rights by AMS shall be borne by the Customer.

Article 12 Borrowed packaging

The Customer shall return borrowed packaging empty and undamaged within 14 days after delivery to AMS at an address designated by AMS. All costs relating to this obligation (including but not limited the non-fulfilment thereof) shall be borne by the Customer.

Article 13 Complaints

13.1 In case of visible defects to the Goods, the Customer must immediately upon delivery submit a complaint in writing to AMS. If Customer does not do so, the Customer forfeits all of its rights in respect to such defects. In case of defects which are not directly visible, the Customer must immediately upon discovery submit a complaint in writing to AMS. Notwithstanding the previous sentence, the Customer forfeits in any way all his rights with respect to such defects if he has not submitted his complaint in writing within eight days after discovery of the defects or within eight days after he could reasonably have discovered the defects. Failing submission of any complaints within the time periods stipulated in this Article 13.1, the Goods are deemed to have been accepted by the Customer. Goods subject to a complaint made in accordance with this Article 13.1 must be returned to AMS at the expense of the Customer, unless AMS has indicated otherwise.

13.2 Without prejudice to Article 13.1, a Customer can in any way not make any complaints with respect to delivered Goods after he has in whole or in part, used such Goods or processed such Goods, has delivered such Goods to third parties or has made such Goods available to third parties or has, implicitly or explicitly, accepted such Goods.

13.3 Even if the Customer has timely submitted a complaint, the Customer remains obliged to pay the invoice(s) related to such Goods and remains obliged to accept and pay for possible other Goods (whether identical to the Goods subject to a complaint or not) ordered by him.

13.4 Minor deviations from weight, measure, quantity, color and/or composition of the Goods delivered can never be a reason to submit a complaint nor be a reason for a claim for damages or ground for an adjustment of the price. weight, measure, quantity, color and/or composition of the Goods delivered. With respect to the weight, measure, quantity, color and/or composition of the Goods delivered, the measurements, counting and judgments of AMS are decisive. Without prejudice to the first sentence of this Article 13.4, AMS reserves the right to deliver up to 10% in excess of or up to 10% less than the ordered quantities, in which case the total price to be paid by the Customer to AMS shall be adjusted proportionally to a higher or, as the case may be, lower amount.

13.5 In case the Goods are, partly or wholly, produced or to be produced in China and/or any other Asian country, the Customer accepts that the Goods produced or to be produced in such country are or may be of a lesser standard of quality than is customary in Western Europe. The Customer cannot make any complaint and has no claim against AMS if the standard of quality is less than the standard of quality he expected.

13.6 If a complaint as referred to in this Article 13 is considered to be justified by AMS, AMS is, at its own discretion, only obliged to either deliver the missing part(s) or quantity, to replace the Goods delivered or to credit the Customer the purchase price for the relevant Goods, all the foregoing against delivery of the relevant Goods subject to complaint to AMS if AMS so desires. The Customer is obliged to follow the instructions by AMS with respect to the storage or return of the relevant Goods.

13.7 Without prejudice to the other provisions in the Agreement or in these Conditions, any claim based on the argument that the Goods delivered by AMS do not conform to the Agreement expires 1 year after delivery to the Customer.

13.8 Without prejudice to the other provisions in the Agreement or in these Conditions, the Customer recognizes and agrees that not all Goods to be delivered will be inspected prior to delivery.

Article 14 Limitation of liability

14.1 Except in cases of wilful intent or gross negligence of AMS or its directors, AMS shall not be liable for any damage or losses. AMS shall not be liable for damage or losses resulting from wilful intent or gross negligence by any of its employees or persons (e.g. agents) for whom AMS bears or would bear legal liability.

14.2 AMS shall never be liable for consequential damage or losses, including but not limited to loss of profits, incurred losses and costs, loss of contracts, loss of savings and losses resulting from the fact that marketing or promotional activities or campaigns could not take place or could not take place on the scheduled date(s).

14.3 AMS's liability is at all times limited to the amount invoiced by AMS for the relevant Goods or, in case the liability is (ultimately) caused by legal or other acts by third parties and/or breach of contract by third parties, to the amount that AMS can recover from such third parties. In case AMS is insured against the damage and losses for which a claim is made, is, without prejudice to the foregoing, the liability of AMS in any way limited to the amount that will be paid out under such insurance. AMS is not obliged to enforce its rights under any insurance policy.

14.4 AMS stipulates all legal and contractual rights and defences which it can invoke in respect of its liability towards the Customer also for the benefit of all those persons which are engaged in the execution of the Agreement.

14.5 EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, AMS MAKES NO WARRANTIES EXPRESS OR IMPLIED AND EXPRESSLY DISCLAIMS WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, AND AMS SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES IN ANY CASE OF NONCONFORMITY OR ARISING FROM ANY ALLEGED OR ACTUAL BREACH OF THIS AGREEMENT.

Article 15 Force Majeure

15.1 In case the fulfilment of any of its obligations by AMS is, wholly or partly, permanently impossible because of force majeure, both AMS and the Customer have the right to dissolve the Agreement in whole or in part. The Customer is not entitled to damages.

15.2 In case the fulfilment of any of its obligations by AMS is, wholly or partly, only temporarily impossible, the Customer is only entitled to dissolve the Agreement in case fulfilment of the obligations by AMS remains impossible for a consecutive period of 6 months. The last full sentence of Article 15.1 is applicable.

15.3 The term 'force majeure' includes but is not limited to: shortage of raw and auxiliary materials for the production of the Goods, strikes and other labour conflicts, shortage of labour, breach of contract by (direct and indirect) suppliers of AMS, all circumstances which disrupt the normal business of AMS and/or its suppliers, transport problems, import and export restrictions and all situations, facts, circumstances and reasons which fall under force majeure ('overmacht') under Netherlands law.

15.4 In case AMS has, at the beginning of the situation of force majeure, already fulfilled part of its obligations or if AMS is still able to fulfil part of its obligations despite the force majeure, AMS is entitled to payment in respect of the obligations it has already fulfilled and is also entitled to fulfil the obligations which it is able to fulfil and payment in respect of such obligations as if there was a separate agreement.

Article 16 Governing law and competent court

16.1 All legal relationships between AMS and the Customer are governed by Netherlands law without regard to the provisions of the Vienna Sales Convention.

16.2 Any and all disputes between AMS and the Customer shall be exclusively submitted to the competent court in Amsterdam, The Netherlands, provided that AMS is always entitled to submit a dispute to the competent court in the place of domicile, place of incorporation and/or place of business of the Customer.
