

General Terms and Conditions of Sale of Neil David B.V.

1. Applicability

- 1.1. These 'General Terms and Conditions of Sale of Neil David (hereafter: "General Conditions") apply to and form an integral part of all quotations, offers, confirmations and service or sale agreements concluded between Buyer and "Neil David B.V."
- 1.2. Neil David B.V. has been established under Dutch law.
- 1.3. Buyer in the General Conditions means: the counterparty of Neil David.
- 1.4. The application of any terms and conditions used by Buyer is expressly excluded.

2. Quotations / Agreement

- 2.1. Unless otherwise stated, any offer or quotation by Neil David is subject to contract.
- 2.2. An agreement shall take effect once an offer accepted by Buyer has been confirmed by Neil David in writing.
- 2.3. Orders for goods made on demand ("specials") cannot be cancelled.
- 2.4. Unless agreed otherwise all other orders may be cancelled or changed within 3 (three) working day following the order confirmation by Neil David. Any other change or cancellation of an order is subject to Neil David's written approval and is subject to conditions by Neil David.
- 2.5. If the price, discounts or dates of delivery are based on an apparent error, Neil David may correct the mistakes or cancel the order.
- 2.6. All agreements shall at all times be subject to credit approval by Neil David. The aforementioned does not prevent Neil David from requiring at any time security for compliance with Buyer's financial obligations.

3. Price and payment

- 3.1. All quoted prices by Neil David B.V. are in euro.
- 3.2. All prices are exclusive VAT and other government duties or taxes, as well as any costs incurred in the context of the agreement, such as administrative, transport and COD charges. These taxes and costs will be added to the sales price and form a part of the agreed invoiced amount due by Buyer.
- 3.3. Price adjustment by Neil David is allowed when the cost for any reason whatsoever prove to be higher for Neil David than the price quoted, or

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is higher than foreseen by Neil David I at the time at which the agreement was reached.

- 3.4. If discount is agreed for the purchase of a certain quantity or range in an order, Neil David is not obliged to apply the discount if fewer or different goods than those agreed are actually ordered.
- 3.5. Unless expressly agreed otherwise, all orders are accepted on the basis of pre-payment of 70% of the amount due.
- 3.6. Any invoice must have been paid on Neil David's bank account not later than 30 (thirty) calendar days upon invoice date. No discount is allowed for early payments.
- 3.7. If the invoiced amount is not paid within the payment term, then the Buyer is in default without any notice being required. In addition to any other rights and remedies Neil David may have under applicable law, interest will accrue on all late payments at the rate of 1% (one percent) per calendar month or part of the month or the applicable statutory rate, whichever is higher.
- 3.8. In the event that collection is necessary all collection costs are payable by Buyer equal to 10% of the principal sum owed with a minimum of 500 euro.
- 3.9. All legal costs, including legal advice and representation in court and out of court, as well as all execution costs, shall be for the Buyer's account.
- 3.10. Even if the Buyer is of the opinion that the quality of the delivered goods or services is not in accordance with the agreed goods or services, this does not release him from the obligation to pay.
- 3.11. If fewer goods are delivered, or received in good condition, than invoiced, and Buyer objects in good time, Buyer remains liable for the amount invoiced in respect of the goods received in undamaged condition.
 1. In the event of any default by Buyer in the payment of any amounts or charges due, Neil David has the right to postpone any further deliveries of any goods, without being liable for any losses by Buyer. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the agreement or at law.
 2. Set-off by Buyer of a claim (or alleged claim) against its debt to Neil David will not be permitted otherwise than with Neil David's express written consent.

4. **Delivery / Transport cost or damage**

- 4.1. Neil David shall always use commercially reasonable efforts to deliver the services or goods within the delivery term. However, unless explicitly agreed otherwise in writing, delivery dates communicated in or acknowledged by Neil David are approximate dates. Neil David shall not be liable or be in breach of its obligations, when delivery is made sooner or later than the communicated delay.
- 4.2. If the communicated delivery date is exceeded, Buyer is still obliged to take delivery of the goods or services, unless before delivery Buyer has put Neil David in default, allowing Neil David with a reasonable period to execute the agreement, and such term has also expired.
- 4.3. Neil David may postpone any delivery in the case of production problems affecting the quantity of goods or the quality of goods produced. If such delay last longer than 3 (three) calendar months, either party may cancel the order. Neil David is not liable for any losses, including lost profits or savings by Buyer.
- 4.4. Unless explicitly agreed otherwise, any delivery is made under Incoterms 2010 conditions: Ex Works.
- 4.5. When Buyer fails to take delivery of the goods or services, or fails to provide the information or instructions to enable delivery it is fully liable to Neil David for all damages and losses suffered by Neil David, such as (but not limited to) transportation costs, extra storage, handling and insurance. Regarding (re-)delivery, Neil David may demand prior payment of all aforementioned costs.
- 4.6. Neil David is entitled to partial delivery of the goods or services.
- 4.7. Upon delivery, Buyer shall check the condition of the packaging and, if this has any defects, Buyer shall, in the presence of the carrier, open the packaging and check the goods for damage.
- 4.8. If the goods are damaged Buyer shall refuse delivery of the damaged goods and have the carrier take it back. It shall notify Neil David immediately by e-mail with a picture of the condition in which the goods and packaging have been delivered.

5. **Changes to specifications, complaints and returns**

- 5.1. Minor changes can occur in shape or color depending on the material the good is made of or design of the good.

- 5.2. Depending on the materials used for its manufacture, the original goods may change in the course of time, due to environmental influences (UV – light and other for lacquered goods, colors, fabrics and other).
- 5.3. Neil David is constantly searching to improve its goods. Goods delivered may therefore technically differ from goods ordered.
- 5.4. If the goods delivered are not, in the opinion of the Buyer, in accordance with the goods ordered or not all goods have been delivered, Buyer shall immediately notify Neil David by e-mail and in any event not later than the fifth working day following the delivery date. Neil David is not obliged to deal with complaints that have been received beyond this term. Any complaint filed by Buyer must be specified as detailed as possible with a digital photo annexed to the e-mail.
- 5.5. If the complaint, according to Neil David, is justified, then Neil David has the choice: (i) to replace the defect or missing goods, or (ii) to credit Buyer the purchase price.
- 5.6. Defect goods may only be returned to Neil David at Neil David's expense after Neil David has given its prior written approval or Neil David requested to return the defect goods. If the goods have not been received within 15 (fifteen) working days, Buyer is supposed to keep the goods and to have withdrawn its complaint.
- 5.7. In case of replacement of defective goods or goods taken back, the extra costs for mounting, dismounting or re-installation, change of technical installations and other costs are fully at Buyer's charges.

6. Suspension and termination

- 6.1. Neil David is entitled to suspend in whole or in part performance of its obligations under any agreement or to terminate the agreement if:
 - (i) Buyer has failed to comply on time, in full or at all with its obligations under previous agreements;
 - (ii) if having entered into the agreement, Neil David has good reasons to fear that Buyer will not (be able to) comply with its financial obligations;
 - (iii) Buyer failed to supply the requested security or any adequate security.
- 6.2. If, due to delay on the part of Buyer Neil David cannot reasonably be expected to comply with the agreement upon the terms originally

agreed, then Neil David is entitled to cancel the agreement with immediate effect. Buyer shall be liable towards Neil David for any and all costs or damages, or loss in profits suffered by Neil David.

- 6.3. Neil David is entitled to terminate the agreement if circumstances arise whose nature and extent means that Neil David cannot be expected according to the principles of reasonableness and fairness to perform the original agreement.

7. Warranty

- 7.1. For most products product specifications can be downloaded from the internet site www.neildavid.com.
- 7.2. Neil David warrants that under normal use and in accordance with the user – or installation instructions and taking into account the product specification the goods shall at the time of the delivery to Buyer and for a period of 12 (twelve) months from the date of delivery, be free from defects in material or workmanship and shall conform to the product specifications.
- 7.3. The warranty section 7 is considered void if the alleged defect is found to have occurred as a result of environmental or testing circumstances, misuse, use other than normal use in respect to the specific good, neglect, improper installation, accident, improper storage, or repairs or modifications made without the prior written express consent of Neil David.
- 7.4. Subject to the exclusions and limitations as set forth in the above sections as well as in Section 8, the foregoing states the entire liability of Neil David in connection with defective or non-conforming goods.

8. Limitation of liability

- 8.1. Without prejudice to any mandatory legal rules, the following applies. Regarding goods delivered by Neil David:
- a) Neil David shall not be liable for any lost profits or savings, loss of reputation or goodwill, indirect or incidental or consequential damages arising out of or in connection with the sale of the good(s) or the use of these whether or not any claim is based on tort, warranty, contract or any other legal possibility, even in the circumstances that Neil David has been advised of any risks.

- b) Neil David's aggregate and cumulative liability shall not exceed an amount equal to 50% of the purchase value aggregate and cumulative.

Regarding services rendered by Neil David:

- c) Neil David declines any liability for damages as a result of the use of services rendered by Neil David.
- d) Neil David's liability shall at all times be limited to the maximum amount covered by Neil David's insurance for the type of damages.

9. Force majeure

- 9.1. In the event of force majeure, the obligations of either party are suspended until the situation of force majeure has ended. If the force majeure lasts longer than 3 (three) calendar months, then either party is entitled to terminate the agreement without any liability to compensate the other party.
- 9.2. 'Force majeure' includes, in addition to the definition by law, import and export bans or controls by, or due to, any government or power, the failure of suppliers or service providers of Neil David to deliver on time or at all, suspension of work by, or a high amount of sick leave amongst, the employees of Neil David or its suppliers.
- 9.3. Neil David is also entitled to rely on force majeure if the situation of force majeure begins after Neil David should have fulfilled its obligations.
- 9.4. Insofar as at the time the situation of force majeure commences Neil David has partly fulfilled its obligations under the agreement or is still able to do so, then Neil David is entitled to invoice for all the parts of the agreement it has complied with or will comply with. In such a case Buyer is obliged to pay as if it were a separate agreement.

10. Retention of title

- 10.1. All goods delivered remain the property of Neil David until Buyer has fulfilled its obligations to Neil David in full. If any invoice remains unpaid, Neil David's retention of title shall also cover all goods previously delivered which have been paid for by Buyer.

- 10.2. Goods that are subject to retention of title may only be sold in the context of normal business practice and may not be pledged or otherwise encumber the goods subject to retention of title.
- 10.3. If any attachment is levied by a third party upon the goods subject to retention of title, then Buyer shall inform the third party levying the attachment of the retention of title and notify Neil David of this immediately.
- 10.4. Buyer undertakes to keep insured the goods subject to the retention of title against fire, explosion, or water damage, as well as against theft. On demand by Neil David, Buyer shall provide a copy of the insurance policy, as well as ensure that the rights under the insurance policy covering the goods subject to the retention of title shall be transferred to Neil David or that Neil David is subrogated in these rights.
- 10.5. If Buyer fails to fulfil its obligations or if there is valid reason to fear that it will do so, Neil David will have the right to take back goods delivered to which the retention of title referred to in this paragraph applies (or to arrange for them to be taken back) from Buyer or from third parties that hold the goods on behalf of Buyer. Buyer will be required to fully cooperate on pain of a penalty of 10% per day of the amount payable by it. Neil David will have the right either to retain such goods until the purchase price, including interest, costs and damages, has been paid in full, or to sell the goods to third parties, in which case the net proceeds will be deducted from the total amount payable by Buyer.

11. Intellectual property rights and copyrights

- 11.1. Neil David retains the rights and powers it accrues on the basis of the Copyright Act and other intellectual and industrial legislation and regulations relating to all the goods or services it supplies, insofar as these rights do not belong to any third party.
- 11.2. Buyer may not have goods supplied by Neil David copied elsewhere, or manufacture imitations thereof that differ in only minor details from the goods supplied, or become directly or indirectly involved in this.
- 11.3. Copyright or any other intellectual property right on sketches, designs or models in whatever phase of elaboration these are and have been delivered to or shown to Buyer, remain the full property of Neil David

and may not be used otherwise than agreed in writing and solely for that specific purpose. Any permitted use does not mean that intellectual property rights have been transferred.

- 11.4. Without a prior written permission by Neil David, Buyer is not allowed to copy pictures, designs, brochures and other material or to use the information on its internet site. Permission by Neil David does not affect the rights of the author of the information provided.

12. **Applicable law / disputes**

- 12.1. All agreements are subject to the law of the Netherlands.
- 12.2. The court with exclusive jurisdiction is that covering the area where Neil David B.V. has its registered office at the time a dispute arises. This also applies if the goods have been delivered in part or entirely abroad or if Buyer has its registered office or is domiciled abroad, unless mandatory law provides otherwise.
- 12.3. The parties shall always endeavor to resolve a dispute amicably, before any application is made by either party to the court.
- 12.4. The terms of the United Nations convention on Contracts for the International Sale of Goods (the Vienna Sales Convention) shall not apply.

13. **Final terms**

- 13.1. In the event that these general terms and conditions are available in a language other than English, and there is any dispute as to interpretation or explanation, the English text of these general terms and conditions shall prevail.
- 13.2. The version that is binding is the latest version published on www.neildavid.com/generalconditions at the time the agreement is entered into.
- 13.3. If any provisions in these general terms and conditions are void or revoked by the courts, the remaining provisions remain in force. Neil David and Buyer shall negotiate substitute provisions that are in line with the original provisions in terms of purpose and scope.

Amsterdam, Version October 2019