

**GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY AND PAYMENT**

**OF**

**De besloten vennootschap**

**Prodin Holding B.V.  
Industrieweg 23  
7949 AJ Rogat  
The Netherlands**

**registered at the Chamber of Commerce under number 66379199**

**filed at the Registry of the Court Noord-Nederland (location Assen)  
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**DECEMBER 2017**

## **ARTICLE 1: APPLICABILITY**

**a.** These terms and conditions apply to all offers, sales and deliveries by private company with limited liability (after Dutch Law) Prodin Holding B.V. (Chamber of Commerce registration no. 66379199) and their subsidiaries, hereinafter referred to as Prodin, to a third party, to all activities executed by Prodin by order of a third party, and to all agreements in the broadest sense of the word entered into by Prodin with a third party.

NB: Prodin is free, with regard to the use of these general terms and conditions, to point to the aforementioned companies with another name than Prodin.

**b.** These terms and conditions apply in and outside the Netherlands, regardless of the place of residence or registered office of the parties involved in any agreement, and regardless of the place where the agreement has come about or should have been implemented.

**c.** If the other party has purchase conditions in place, these purchase conditions will not be binding for Prodin in so far as they deviate from these terms and conditions.

**d.** Any deviation from these terms and conditions used or allowed by Prodin at any time to the benefit of the other party can never be construed as the latter's right to appeal to it later or to claim the application of such deviation for them as an established fact.

**e.** If the other party takes note or could have taken note of these general conditions in another language than the Dutch language and differences in interpretation arise from the respective versions, the Dutch version will prevail over the version in the foreign language, unless Prodin expressly waives this in writing.

## **ARTICLE 2: OFFERS**

**a.** All offers and quotations are non-committal, unless explicitly stated otherwise. They have been made to the best of Prodin's knowledge and are based on data that may have been provided on the request for an offer.

**b.** The specifications provided by Prodin on websites, in images, multimedia, catalogues, brochures or drawings or in any other way with respect to size, capacity, performance, colour, material structure, finish or results should be regarded as having been provided as estimates and as having been provided non-committally, unless explicitly agreed otherwise.

Prodin is not held to comply with these specifications and therefore does not accept any liability for any incorrectness in these data.

## **ARTICLE 3.1: ORDERS/AGREEMENTS**

**a.** An order is understood to mean: every agreement with Prodin, regardless of whether it undertakes to execute activities or make staff, material or space available or carry out any other performance whatsoever, in the broadest sense.

**b.** All agreements entered into with Prodin will only become binding upon a written confirmation by Prodin or due to Prodin having commenced the execution of the order. Any supplements or changes to the afore-mentioned agreements will only become binding for Prodin after and in so far as these have been accepted and confirmed in writing by Prodin. The other party will be deemed to have accepted changes or supplements to agreements entered into with Prodin, if the other party has not objected in writing against these changes and/or supplements within eight days after he has or could have taken cognizance of these changes and/or supplements. The other party is deemed to have knowledge of the said changes and/or supplements and to have accepted these at the moment at which Prodin has commenced the activities to which these changes and/or supplements are related.

Only the Board of Directors and possibly those explicitly authorised by the Board of Directors to enter into agreements on behalf of Prodin are allowed to do so.

c. Unless explicitly agreed on otherwise in writing, Prodin is entitled at all times to have part of the order or the entire order executed by a third party, on the understanding that these terms and conditions also apply in the favour of this third party, provided that Prodin authorises such third party in writing – even afterwards, if necessary – to appeal to these terms and conditions without this authorisation causing any obligations for Prodin.

d. Where Prodin sells goods in bulk or brokers in the sales of such, this takes place on the basis of the characteristics of these goods as notified to Prodin, whether or not on the basis of tests, investigations and/or analyses. Prodin cannot be held liable in any way by and/or on the part of the other party for the difference in the stated and delivered characteristics and/or loss of quality. Aforementioned circumstances do not form a ground for the other party to terminate and/or suspend the contested agreement.

### **3.2: supplementary in respect of investigations, tests and analyses.**

a. Where Prodin, whether or not on instruction of the other party, carries out an investigation into the characteristics of materials, the result of its findings always relate to the materials that had been delivered to Prodin.

b. Where Prodin takes or receives samples, its findings therefore relate to the characteristics of those particular samples.

c. In the qualification of a shipment of material Prodin aims, in relation to the instruction it has received, by taking samples and by subsequently analysing these in accordance with its protocol and the resources it has at its disposal, to obtain an as representative as possible view of this shipment of material. The choice of the protocol and the tools and/or methods used and/or to be used is at the discretion of Prodin.

d. Despite the care Prodin observes in this, Prodin cannot guarantee that during treatment and/or processing of the material there may be discrepancies compared to its findings relating to the samples taken.

e. Prodin is entitled to return the samples which are in its possession, whether or not immediately afterwards, after it has carried out its work, to the other party for the other party's account and at its risk, to destroy them (or have them destroyed) for the account of the other party and in addition Prodin is entitled to dispose of these samples without this leading to claims from the other party. This at the discretion of Prodin.

### **ARTICLE 3.3: ORDERS/AGREEMENTS CONTRACTING WORK**

a. Unless expressly otherwise agreed in writing, the other party is, in order to allow for the proper fulfilment of the work by and/or on the part of Prodin, responsible for, including but not limited to, the required: permits, insurances, tools, equipment, raw materials and such like. See also the provisions in article 5.f of these conditions. Should the other party fail in this either wholly or in part and this failure is to blame for a reduced performance of and/or on the part of Prodin, then the other party is liable for both direct and indirect loss. The other party indemnifies Prodin against all claims by third parties in this respect.

b. Where Prodin and/or the third parties it has engaged carries out work for the other party on an hourly basis and submits worksheets and/or timesheets and/or has these signed off by the other party (he/she who is present at the workplace on behalf of the other party and may usually be deemed to be sufficiently competent by Prodin), the work related and performed on this basis is deemed to have been carried out and agreed.

If there is no one available from and/or on the part of the other party to sign off and Prodin submits to the other party, whether or not in writing, worksheets and/or timesheets, the work related to such is deemed to have been carried out in a correct manner, unless the other party has within 8 days expressly notified Prodin of objections in writing.

### **ARTICLE 4: LIABILITY AND INDEMNITY**

a. Except for the provisions of Article 9 of these terms and conditions, Prodin is not liable for any damage caused either directly or indirectly by the items delivered – including extra work – not being in compliance with the

agreement, unless this is due to Prodin's intent or gross negligence. Consequently, Prodin also does not accept any liability in the event of serious calamities, such as, but not limited to, fire, water damage and any outside contingency, such as war and earthquakes.

**b.** Prodin is not liable for loss and/or any form of damage to goods of the other party in its possession or which are in the control of the third party acting under its responsibility.

**c.** To the extent that the other party, or the personnel employed by them and/or by the third party engaged by them on the basis of cooperation and/or on the basis of providing assistance, are involved in the execution of the transaction between the Prodin and them, Prodin will not be liable for any direct and indirect damage caused or indirectly caused by or caused in part by the other party, as well as by the third party engaged by them, nor are they liable to the other party's underlying client for these matters. The other party is liable for all equipment and infrastructure made available by them to Prodin and/or the third party engaged by them.

**d.** The other party indemnifies Prodin against any claim from and/or by third parties which relate to the delivered goods, the performance and/or the result of the work it has carried out in the context of the agreement entered into with the other party.

**e.** If Prodin should be liable for any other reason for any damage under the agreement, the damages payable will not exceed the invoice amount (exclusive of value added tax) with regard to the respective goods and/or services, with a maximum of EUR 1,000.00 (in words: one thousand euros).

**f.** A claim under these terms and conditions does not suspend the other party's payment obligation towards Prodin.

#### **ARTICLE 5: PERIOD AND LOCATION OF DELIVERY**

**a.** The periods of delivery mentioned in the offers, confirmations and contracts are to the best of Prodin's knowledge and will be complied with as much as possible, but they are not binding for Prodin.

**b.** If these periods are exceeded due to whatever cause, the other party will not be entitled to damages, dissolution of the agreement or non-compliance with any obligation arising for them from the respective agreement or from any other agreement whether or not connected with this agreement.

**c.** If the delivery period is exceeded by a wide margin, at the discretion of Prodin, Prodin will enter into further consultation with the other party.

**d.** Delivery is ex Prodin company or any other location to be decided by Prodin.

**e.** If goods sold or services offered by Prodin are not accepted after they have been offered to the other party, they will be available to the other party for a period of three weeks. Throughout this period, the goods are stored for the other party's account. After the period mentioned above, the total amount that would be payable for purchase or compliance, increased with the costs and interest, could be claimed from the other party, even without delivery of the said goods or services. The payment will then be deemed made as damages to Prodin.

**f.** Where Prodin at any time and at any location must render a service to the other party, or have this done, the other party is responsible for a proper and safe work environment which is equipped for this service provision, including all the required (mains) services for the period that Prodin carries out its work. Should in the view of Prodin this not be, or insufficiently, provided, Prodin is entitled to suspend its work and charge the costs of the delay to the other party. Prodin is also entitled to ensure itself there is a correct suitable work environment available for the service to be carried out. In that case, Prodin is entitled to invoice the costs it incurs to this end, including its own costs, to the other party.

**g.** If the other party does not comply with any obligation arising from this agreement or any other agreement connected with the order or does not do so in time, Prodin, upon informing the other party in writing that he is

default, without judicial intervention, will be entitled to suspend the execution, without Prodin being held to pay any damages.

#### **ARTICLE 6: TRANSPORT AND TRANSPORT RISK**

- a. The choice of the means of transport is for Prodin to decide.
- b. The transport of the goods ordered with Prodin is for the other party's account.
- c.1. As from the moment of dispatch, all goods ordered from Prodin travel at the other party's risk. Also if costs of carriage to the delivery address have been agreed on, the other party will be liable for any damage sustained during transport.
- c.2. All the correspondence conducted by and on the part of Prodin with the other party and/or with third parties on behalf of the other party, is from the moment of dispatch at the risk of the other party, irrespective of the delivery conditions relating to the goods and/or services to be delivered by Prodin as agreed with the other party. The other party must ascertain that the correspondence derives from Prodin. Prodin cannot be held liable in any way by, and/or on the part of, the other party for damage and/or changes to and/or corruption of the content of the correspondence sent by or on the part of Prodin.
- d. The goods will be delivered only to the ground floor. If goods are to be delivered at another location than at ground-floor level, the additional costs and risks are to be borne entirely by the other party.  
If at the time of delivery the other party is not present or does not appear to be able to receive the goods or is otherwise in default to receive the goods, Prodin will be entitled to convert the delivery into an obligation for the other party to collect the goods at the address provided by the carrier after the latter has informed the other party by leaving a written message to such effect.
- e. At arrival or receipt of the goods, the other party has to check the condition of the goods. If it then becomes apparent that the goods or materials have sustained damage, he has to take all measures to obtain damages from the carrier. By signing the receipt provided by or on behalf of Prodin, the other party declares he has received the goods in good condition.

#### **ARTICLE 7: PRICES AND COSTS**

- a. Prodin fixes a price or fee for every order individually. This price or fee is exclusively intended as the amount to be paid for the performance to be executed by Prodin, including the normal costs involved. The prices mentioned in the offer are based on the cost price factors, rates, wages, taxes, rights, expenses, cargo et cetera then known. In the event of an increase of any of these factors, Prodin will be entitled to change the offered (selling) price accordingly.
- b. Therefore, the price or fee does not include any levies imposed by the government or other bodies, including fines, insurance premiums etc.
- c. Prodin is entitled to demand down payments, or a deposit or security (in the form of a bank guarantee) in advance.
- d. Prodin reserves the right to charge shipping costs.

#### **ARTICLE 8: TERMS AND CONDITIONS OF PAYMENT**

- a. Unless explicitly agreed on otherwise in writing, payment of invoices sent by Prodin must be made within 8 (eight) days upon invoice date, without deduction of discounts and without any form of compensation.
- b. Prodin is entitled to charge a credit limitation surcharge of at least 2%, but only if this is explicitly stated in the invoice. Deduction of this surcharge from the invoice amount will be allowed, if the invoice amount is paid within 8 days upon invoice date.

c. All payments, without deduction or settlement of debt, are to be made at the offices of Prodin or into a bank or giro account to be designated by Prodin.

d. Discounts can only be granted upon mutual consultation between Prodin and the other party. Unless explicitly agreed on otherwise in writing, these are one-off discounts. With subsequent transactions no appeal can be made to previous discounts.

#### **ARTICLE 9: COMPLAINTS**

a. Any complaints about the delivery of goods, the services provided and invoice amounts, must be submitted to Prodin in writing by registered letter within eight days upon receipt of the products, services or the respective invoices, with the facts to which the complaints are related carefully stated. The other party's right to complain lapses with respect to the goods and/or services used, edited and/or processed by or on behalf of the other party.

b. Complaints with respect to the stipulations in these terms and conditions as referred to in, inter alia, Article 6:233, under a, of the Dutch Civil Code (voidness regarding one or multiple stipulations on the grounds of being unreasonably onerous) must also be submitted to Prodin in writing by registered letter within eight days upon taking cognizance of these terms and conditions or the time at which these could reasonably have been taken cognizance of, with the facts to which the complaints are related carefully stated. The right to complain lapses at the moment at which the agreement is brought about. The other party refrains from making an appeal afterwards on the grounds of one or multiple stipulations in these terms and conditions being unreasonably onerous, in so far as the stipulations felt to be unreasonably onerous are not imperatively prescribed by law.

c. If the complaints submitted do not comply with the provisions above, they can no longer be received, and the other party will be deemed to have approved the delivered goods and/or performed services. If in Prodin's opinion a justified complaint has been submitted, it will have the right to pay to the other party a sum in damages to be decided in mutual consultation, or to proceed to making a new delivery while keeping the current agreement unchanged, under the other party's obligation to return to Prodin the incorrect or faulty good(s) delivered carriage paid, at the discretion of Prodin.

d. Prodin will only be held to take cognizance of complaints submitted, if at the moment at which the complaints are submitted the other party involved has integrally complied with all his existing obligations towards Prodin, regardless of what these obligations consist of and from whatever agreement they arise.

e. Return shipments insufficiently packed or bearing insufficient postage will be refused by Prodin. All return shipments from buyers or clients are for their account and risk.

#### **ARTICLE 10: CANCELLATION/DISSOLUTION AND SUSPENSION**

a. If the other party is or remains in default in any way with respect to complying with his obligations regarding deliveries or activities executed or to be executed by Prodin previously, or pursuant to other obligations, Prodin has the right to suspend its obligations towards the other party or to cancel/dissolve the underlying agreements in whole or in part, without being held liable by the other party in any way and without prejudice to the rights to which Prodin is entitled. Prodin will also have this right, if the other party is declared bankrupt, has petitioned for suspension of payment, the Debt Rescheduling Private Individuals Act (Wettelijke Schuldsanering Natuurlijke Personen – WSNP) is declared applicable, other forms of debt supervision or windingup of the company or business activities occurs, or if – to the standards of Prodin – these circumstances threaten to occur. All claims Prodin has on the other party will then be immediately due and payable.

b. If the other party wishes to terminate/cancel the contract(s) that it has entered into with Prodin, then Prodin is also entitled to demand fulfilment of the contract(s) entered into; or, at the discretion of Prodin, the other party will owe termination costs of 100% of the agreed market value or transaction value and, on cancellation, will owe cancellation fees of at least 30% of the market value or the transaction value, all of which also at the sole discretion of Prodin.

## **ARTICLE 11: COMPENSATION IN THE CASE OF NON-PAYMENT OR LATE PAYMENT**

If payment of the invoices sent by Prodin has not taken place within 8 (eight) days upon invoice date, the other party will be deemed to be legally in default and Prodin will have the right to charge to the other party interest on the full payable amount as from the expiry date equal to the statutory interest rate with a minimum of 1% per month or a part of this, without prejudice to the other rights to which Prodin is entitled, including the right to recover all costs under the claim, both court costs and extrajudicial collection costs, the latter of which are fixed in advance at 15% of the amount to be claimed, with a minimum of EUR 250 (in words: two hundred and fifty euros), all of the above without notice of default.

NB: There where the legislator has established by law the extrajudicial collection costs to be passed on to the other party, the other party is held to pay extrajudicial collection costs pursuant to the respective provisions of the law.

## **ARTICLE 12: RETENTION OF TITLE**

a. As long as the other party has not made full payment to Prodin for goods, parts and installations delivered to him by Prodin and/or activities executed for him by Prodin, these goods and/or materials, which are for the other party's account and risk, will remain the undisputed property of Prodin.

b. If a other party does not comply with any obligation from the agreement with respect to the goods sold and/or activities executed, Prodin, without any notice of default being required, has the right to take the goods or materials back, in which case the agreement will be dissolved without any judicial intervention, without prejudice to the right of Prodin to claim compensation at law or extra judicially for any damage suffered or yet to be suffered by Prodin, including loss suffered, lost profit, interest, transport costs etc.

c. Prodin reserves the right to actually retain goods, tools, materials, vehicles, money, negotiable instruments, (financial) documents et cetera which it has obtained from the other party under whatever title, until the other party has fully complied with his financial and other obligations towards Prodin.

d. For transactions with a other party established in a country where prolonged retention of title applies, Prodin has the right to declare the prolonged retention of title as it applies in the respective country applicable at any moment of its choosing.

## **ARTICLE 13: FORCE MAJEURE**

a. In the event of force majeure Prodin is no longer held to comply with its obligations towards the other party. Force majeure includes such events and situations which have a clearly identifiable and direct influence on the company Prodin, such as, but not limited to, serious interruptions of its production process, war (also outside the Netherlands), riot, epidemic, fire, traffic disruption, strike, exclusion, loss or damage during transport, accident or sickness among its staff, import restrictions or other limitations imposed by governments etc. Prodin will be discharged from its obligations, regardless of whether force majeure occurred in its own company or elsewhere, such as in the companies of suppliers, carriers, wholesalers etc.

b. In the event of impediments to executing the agreement due to force majeure, Prodin will be entitled, without judicial intervention, to suspend the execution of the agreement for a period not exceeding six months, or to dissolve the agreement in whole or in part, at the discretion of Prodin. The other party will receive a written notice of such decision made by Prodin.

## **ARTICLE 14: INTELLECTUAL PROPERTY RIGHTS, DESIGN PROTECTION**

a. The intellectual property rights, such as but not limited to copyright, pictoright and design rights, to all products manufactured, services provided etcetera by Prodin (for the benefit of the other party) belong to Prodin. The use or alternative use of these rights, designs and/or ideas of Prodin is strictly prohibited, unless Prodin has granted explicit approval in writing and all conditions stipulated by Prodin in this respect have been fully complied with.

b. If the other party does not comply with the provisions as set out under 14a, Prodin will be entitled, without any further notice of default and/or judicial intervention being required, to claim a fine of at least EURO 11,500 (in words: eleven thousand five hundred euros) per day or a part thereof as long as this non-compliance continues.

#### **ARTICLE 15: GUARANTEES**

a. Prodin will exclusively grant a guarantee in accordance with the provisions of the guarantee clause, if and insofar such provisions have been delivered together with the products. In such cases, the guarantee will only take effect after the other party has informed Prodin of his request in writing by registered letter.

b. If a guarantee is provided by Prodin but if no guarantee clause has been provided, the guarantee term will not exceed six months after delivery of the respective goods. The other party will also need to inform Prodin of his request in writing by registered letter.

c. The guarantee includes repair or replacement of the goods delivered or full or partial credit of the disputed goods, this at the discretion of Prodin. Outside contingency can never lead to Prodin being held to provide any guarantee.

#### **ARTICLE 16: CONSIGNMENTS ON APPROVAL**

Only upon prior written confirmation by Prodin to the other party, the goods delivered by or on behalf of Prodin can be considered consignments on approval for shows, exhibitions, trade fairs and/or other purposes to be indicated by Prodin.

These general terms and conditions also fully apply to goods on approval and on consignment.

#### **ARTICLE 17: APPLICABLE LAW AND COMPETENT COURT**

a. All offers, assignments and contracts to be entered into with Prodin are governed by Dutch law. Nevertheless, Prodin is at liberty to be able and entitled to rely at any time on the applicable law of the country in which the other party is established. In such a case, contrary to the provisions set out under b, the dispute will be submitted to the court that is competent *ratione materiae* in the buyer's/client's jurisdiction. If the nature of the transaction(s) so warrants, Prodin is able and entitled to rely at any time on the Vienna Sales Convention. It is not necessary for Prodin to notify the other party of its choice in advance.

b. All disputes will be submitted to the District Court of Noord-Nederland that is competent *ratione materiae* or to another competent judicial authority, at the discretion of Prodin.

c. If any article or paragraph of these general terms and conditions becomes invalid, the other articles will remain valid.

#### **CONCLUDING PROVISIONS:**

These terms and conditions have been prepared and filed for the benefit of Prodin by [De Incassokamer B.V.](#) and have come about under the applicability of its current and future general terms and conditions of sale, delivery and payment, with due observance of Book 6, Title 3 of the Dutch Civil Code.

These general terms and conditions are also subject to the © copyright of De Incassokamer B.V.