



# Terms and Conditions of Delivery for the Graphic Media Sector

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## Article 1: Definitions

In these Terms and Conditions of Delivery, the following definitions apply:

**Offer/quotation:** any offer by the Supplier to enter into an agreement;

**Services:** any performance that is not the delivery of goods and that is carried out by the Supplier for the Client in return for payment;

**Goods:** proprietary rights and tangible items, which may include: production resources, semi-manufactures and tools and, in particular, typesetting, design drawings, models, working and detailed drawings, data carriers, computer software, data files, photographic images, lithographs, clichés, films, micro- and macro-montages, printing plates, screen printing forms, gravure cylinders, stereotype plates, cutting dies and moulds. These examples are not exhaustive;

**Data carriers:** all means intended for recording, processing, transmitting or reproducing, or making public, texts, images or other data with the aid of equipment, all in the broadest sense of the word;

**KVGO:** Royal Dutch Association of Printing and Allied Industries, with its registered office in Breukelen;

**Supplier:** the natural or legal person who, as contractor, has accepted an order from the Client or who, prior to a possible order from the Client, has issued an offer, or who, in any other manner, has entered into an agreement with the Client;

**Client:** the natural person acting as a consumer or as a business, or a legal person, who has instructed the Supplier to produce and/or supply items, to supply services, or to perform other work;

**Agreement:** any agreement between the Supplier and the Client for the production and/or supply of items, the supply of services, or the performance of other work;

**Personal data:** **personal data** within the meaning of Article 4(1) of the General Data Protection Regulation (GDPR) and the Dutch GDPR Implementation Act (UAVG);

**Processing of personal data:** processing within the meaning of Article 4(2) of the General Data Protection Regulation (GDPR) and the Dutch GDPR Implementation Act (UAVG);

**Items:** exclusively tangible objects that can be controlled or handled by people.

## Article 2: Applicability

- 1 These Terms and Conditions of Delivery apply to the formation, the content and the performance of all agreements concluded between the Supplier and the Client, as well as to all offers, acceptances and other (legal) acts of the Supplier.
- 2 It is possible for the Supplier and the Client to agree explicitly and in writing that these Terms and Conditions of Delivery shall not apply to a particular agreement, but that the Client's General Terms and Conditions (of Purchase) shall apply instead. The application of these General Terms and Conditions of Purchase of the Client then applies solely to that specific agreement for which the arrangement was made. Without such an arrangement between Supplier and Client, these General Terms and Conditions apply.
- 3 If these Terms and Conditions of Delivery have applied to any agreement, they shall automatically – without any further agreement being required between the parties – apply to every subsequently concluded agreement between the same parties, or

- between the legal successors of the parties to the original agreement, unless the parties have expressly agreed otherwise in writing in relation to a specific agreement.
- 4 If any provision of these Terms and Conditions of Delivery is null and void or is annulled, all other provisions shall remain fully in force. In place of the null and void or annulled provisions, new provisions shall be established between the parties that are legally valid and that approximate the original intention as closely as possible.
  - 5 If the parties deviate explicitly in an agreement from one or more provisions of these Terms and Conditions of Delivery, the provisions in the agreement shall prevail. The other provisions of these Terms and Conditions of Delivery shall remain applicable to the agreement.
  - 6 If translations of these Terms and Conditions of Delivery have been issued, the version in the Dutch language shall prevail over any version in another language.

#### Article 3: Offers

- 1 The mere issuance of an offer, whether or not with an indicated price quotation, estimate, preliminary calculation or similar statement, does not oblige the Supplier to conclude an agreement with the Client.
- 2 Offers by the Supplier are always without obligation and may only be accepted without deviations by means of a written notice. An offer shall in any case be deemed to have been rejected if it has not been accepted within one month, unless a different acceptance period is stated in the offer.
- 3 Obvious mistakes or errors in the Supplier's offer do not bind the Supplier.
- 4 If the Client accepts an offer within the period of validity, the Supplier shall have seven days from the date of receipt to decline the order. If the Client suffers damage as a result, the Supplier shall in that case not be required to compensate the Client for such damage.
- 5 If the Client provides the Supplier with data, information, drawings or the like for the purpose of issuing an offer, the Supplier may rely on their accuracy and shall base its offer upon them. The Client indemnifies the Supplier against any claims by third parties relating to the use of data, information, drawings or the like supplied by or on behalf of the Client.

#### Article 4: Formation of agreements and cancellation

- 1 Subject to the other provisions of these Terms and Conditions of Delivery, an agreement shall only be formed:
  - a) through acceptance by the Client of an offer;  
or
  - b) through written order confirmation of an order issued by the Client (verbally or in writing) other than on the basis of an offer;  
or
  - c) by the Supplier actually performing an order from the Client.
- 2 The agreement replaces and supersedes all previous proposals, correspondence, arrangements or other communications between the parties that took place prior to the conclusion of the agreement.

- 3 Amendments to and/or additions to the agreement are valid only when the Supplier has accepted them in writing. The Supplier is not required to accept amendments and/or additions to an agreement and may require a separate agreement to be concluded. If such amendments and/or additions lead to costs, the Supplier may charge these costs to the Client.
- 4 Commitments by and arrangements with subordinates or representatives of the Supplier are only valid if confirmed by the Supplier to the Client in writing.
- 5 If the Client cancels an agreement before the Supplier has begun to perform it, the Client must compensate the damage thereby incurred by the Supplier. Such damage includes, in any event, the Supplier's losses, lost profit and all costs already incurred by the Supplier in preparing the agreement to be performed. These include, for example, reserved production capacity, materials purchased, services engaged and storage.

#### Article 5: Price

- 1 The prices stated in an offer or agreement are in euros. Prices are, unless expressly indicated otherwise, exclusive of costs of packaging, transport and other dispatch costs, import documents, (transport) insurance, travel time, travel expenses and accommodation expenses, and are also exclusive of VAT and/or other government-imposed levies of any kind.
- 2 The price quoted by the Supplier applies solely to the performance in accordance with the specifications agreed in the agreement.
- 3 In the case of combined offers, there is no obligation to deliver a portion of the total performance for the amount stated in the offer for that portion, or for a proportionate part of the price quoted for the whole.
- 4 If no price has been agreed, but the parties have concluded one or more agreements of equal or nearly equal content in the year preceding the agreement, the price shall be calculated on the basis of the production methods used and the calculation rates applied in those earlier agreements, applying the prices that apply at the time of entering into and/or performing the current agreement.
- 5 If no price has been agreed and paragraph 4 of this article does not apply, or if only an indicative price has been given, or if the agreed price may be amended in accordance with these general conditions, the price or the amendment to the price shall be determined at an amount regarded as reasonable in the graphic media sector.

#### Article 6: Price changes

- 1 The indexation of wages, social charges, prices, hours and transport takes place annually in accordance with the KVGO index tool, unless otherwise agreed. The KVGO index tool is based on indexation percentages found in independent and publicly available information sources from various institutions. The KVGO index tool may be requested from the KVGO at any time.
- 2 The Supplier may unilaterally increase the agreed price in the interim if one or more of the following circumstances occur within three months of the conclusion of the agreement: an increase in material costs; an increase in the price of semi-manufactures or services required for the performance of the agreement (including, but not limited to,

increases in shipping costs, wages, employer's social insurance contributions, costs associated with other employment conditions, the introduction or increase of government levies on raw materials, increases in energy or waste costs, a substantial change in currency exchange rates, or comparable circumstances). The Supplier shall inform the Client in good time, in writing or digitally, of any intended price change.

If the Client is a consumer, he shall be entitled to cancel the order in the situations referred to in paragraph 1 of this article. The consumer shall then owe only the demonstrable costs incurred by the Supplier. This provision does not apply to changes resulting from government levies or taxes.

- 3 If the Supplier incurs more work or costs than could reasonably have been foreseen by the parties when entering into the agreement, the Supplier may increase the price. This applies, among other things, in the case of text requiring additional labour, unclear copy, unclear sketches, drawings or models, defective data carriers, computer software, data files, or if the Client supplies defective materials or products. Any similar supplies by the Client that result in the Supplier having more work or costs than could reasonably have been expected at the time of entering into the agreement are grounds for increasing the agreed price. If extraordinary or reasonably unforeseeable processing difficulties arise from the nature of the materials and products to be processed, the agreed price may likewise be increased. The Supplier shall inform the Client in good time, in writing or digitally, of any intended price change.
- 4 The Supplier may increase the agreed price if the Client modifies the originally agreed specifications, including author's corrections or altered instructions after receipt of working drawings, models and typesetting, printing and other proofs. The Supplier shall, within reasonable limits, cooperate with such changes, provided that the content of the performance to be carried out by the Supplier does not materially differ from the performance originally agreed.

#### Article 7: Payment term

- 1 The payment term is 30 days from the invoice date. Payment must be made in the manner indicated by the Supplier. If payment is not made on time, the Client shall be in default without any notice of default from the Supplier being required.
- 2 If delivery in instalments has been agreed, after delivery of the first part, the Supplier may, in addition to payment for that part, also demand payment of the costs incurred for the entire delivery, such as those for typesetting, lithographs and proofs.
- 3 The Client is always obliged, at the Supplier's first request and irrespective of the agreed payment conditions, to make payment in advance in whole or in part and/or to provide security for fulfilment of the amounts payable to the Supplier under the agreement. The security offered must be such that the claim, together with any interest and costs accruing thereon, is properly covered and the Supplier will be able to recover it without difficulty. Any security that subsequently becomes insufficient shall, at the Supplier's first request, have to be supplemented to restore adequate security. If and for as long as the Client fails to comply with the full or partial advance payment and/or provision of

security requested by the Supplier, the Supplier shall be entitled to suspend its delivery obligations.

- 4 If the Client does not pay within the agreed term, then, due to the delay in payment of the amount it owes, the Client shall owe statutory commercial interest, or, where applicable, statutory interest, on this amount from the 31st day after the invoice date. The Supplier shall be entitled to charge one twelfth of this interest for each month or part of a month in which the Client has not fully complied with its payment obligation.
- 5 In the event of late payment as referred to in paragraph 1 of this article, the Client shall, in addition to the amount owed and the interest accrued thereon, be obliged to pay full compensation for both extrajudicial and judicial collection costs, including the costs of lawyers, bailiffs and collection agencies. The extrajudicial costs are set at a minimum of 15% of the principal sum plus interest, with a minimum amount of €100. However, the Supplier shall also be entitled to claim the actual extrajudicial costs if these are higher. If the Client is a consumer and, after the consumer is in default, the outstanding amount has not been paid within 14 days of a reminder from the Supplier, then in respect of the extrajudicial costs the Supplier shall be entitled to an amount equal to the maximum compensation permitted by law for extrajudicial collection costs in accordance with the Dutch Decree on Compensation for Extrajudicial Collection Costs.
- 6 If the Client is in default with payment of any invoice as referred to in paragraph 1 of this article, all other outstanding invoices shall also become immediately due and payable, without any further notice of default being required.
- 7 Payments made by the Client shall first be deducted from the costs owed, then from the interest accrued, and subsequently from the principal sum of invoices that are due and payable, starting with those invoices that have been outstanding the longest. This applies even if the Client states at the time of payment that the payment relates to another invoice.
- 8 Without prejudice to provisions of mandatory law, the Client shall not be entitled to suspend its payment obligations towards the Supplier and/or to set them off against payment obligations of the Supplier towards the Client.
- 9 The Supplier shall be entitled to set off all claims against the Client against any debt that the Supplier may have to the Client or to legal or natural persons affiliated with the Client.
- 10 All claims of the Supplier against the Client shall become immediately due and payable in the following cases:
  - a) if, after conclusion of the agreement, circumstances come to the Supplier's knowledge that give it good reason to fear that the Client will not fulfil its obligations. This is entirely at the Supplier's discretion;
  - b) if the Supplier has asked the Client to provide security for performance as referred to in paragraph 3 of this article and such security is not provided or is insufficient;
  - c) in the event of a petition for bankruptcy or suspension of payments of the Client, liquidation and/or death or bankruptcy of the Client or – insofar as the Client is a natural person – the Dutch Natural Persons Debt Restructuring Act (WSNP) becoming applicable to the Client.

#### Article 8: Method of delivery; retention of title

- 1 Unless otherwise agreed, delivery of items, services and/or other work shall take place at the location of the business where the Supplier carries out its business. Digital deliveries shall take place to the email address specified by the Client for that purpose, by uploading to an external server (at the risk of the Client), or by making them available on the server of the Supplier (or an auxiliary person engaged by the Supplier).
- 2 The Supplier is not obliged to deliver (manufactured) items and/or services in parts.
- 3 The Client is obliged to provide full cooperation with the delivery of the items or services to be delivered by the Supplier under the agreement. The Client shall be immediately in default if it does not collect the items to be delivered from the Supplier after the first request from the Supplier or, where applicable, refuses to accept the items to be delivered.
- 4 Delivery of items by the Supplier to the Client shall take place subject to retention of title until the Client has paid in full everything it owes under any agreement with the Supplier, including accrued interest and costs. Until that time, the Client is obliged to store the items delivered by the Supplier separately from other items and clearly identified as the property of the Supplier, and to insure them and keep them properly insured.
- 5 If items are delivered to the Client in a territory other than the Netherlands, then – if and as soon as these items are located in the territory of the country in question – in addition to the retention of title referred to in paragraph 4 above under Dutch law, there shall also be a retention of title as referred to in paragraph 4 above under the law of the country in question. For the rest, only Dutch law applies to the agreement.
- 6 For as long as the items delivered are subject to retention of title, the Client may not encumber or dispose of them except with the Supplier's express approval. This retention of title also applies to products in which the delivered items have been processed.
- 7 After invoking its retention of title, the Supplier may recover the delivered items. The Client shall grant the Supplier access to the places where the items are located.
- 8 Any agreed transport of the items to be delivered shall be at the Client's expense. The costs associated with transport include, in any event, import and export duties, clearance charges, taxes and any other levies imposed by public authorities, of whatever nature, in connection with the transport and delivery of the items by the Supplier, unless otherwise agreed in writing between the parties.
- 9 The risk in the items, services or other work to be delivered shall pass to the Client ex-warehouse of the Supplier, ex-warehouse of a third party engaged by the Supplier or upon being made available electronically by the Supplier, unless explicitly agreed otherwise in the agreement. Transport of all items is always at the Client's risk. Unless the Client requests in a timely manner that the Supplier to insure the items during transport at the Client's expense (and/or unless otherwise stipulated in the agreement), the transport of the items by or on behalf of the Supplier shall be uninsured.
- 10 For the purposes of transport, the transmission of data by any technical means shall also be deemed to constitute transport.
- 11 The Supplier has fulfilled its delivery obligation by making the items available to the Client at the agreed time in its warehouse, the warehouse of a third party engaged by

the Supplier, or by electronic means. The delivery note and/or accompanying annexes of the carrier, signed by or on behalf of the Client, constitute full evidence of delivery by the Supplier of the items stated on the delivery note and/or accompanying annexes. Acceptance of items from the Supplier by the carrier shall constitute proof that they were in an externally good condition, unless the contrary appears from the consignment note or receipt.

- 12 The Supplier is not obliged to store items, unless the parties agree otherwise in writing. If the Client refuses to accept items offered or made available for delivery, the Supplier shall store the items concerned for 14 days after the date of offering at a location to be determined by the Supplier. After this period, the Supplier is no longer obliged to keep the items ordered by the Client at the Client's disposal and shall be entitled to dispose of them. This includes the possibility of selling the finished product to one or more third parties. The Client shall nevertheless remain obliged to perform the agreement by taking delivery of the items concerned at the agreed price within 14 days of the Supplier's first request. In addition, the Client is obliged to compensate the Supplier for the damage arising from the Client's earlier refusal to accept the items concerned, including storage and transport costs.

#### Article 9: Delivery period

- 1 Any delivery period stated by the Supplier is for indicative purposes only. It shall constitute a strict deadline only if expressly designated as such in writing. Even where a strict deadline has been agreed, the Supplier shall only be in default after a written notice of default from the Client. An agreed delivery period being exceeded does not give any right to compensation. Nor shall the Client, upon termination of the agreement, have any right to compensation, unless the reasonable period set in the notice of default was exceeded due to intent or gross negligence on the part of the Supplier.
- 2 The Supplier is not bound by an agreed strict delivery period if the Client wishes to change the specifications of the work, item, product or service, or fails to comply with the provisions of Article 11, paragraph 1 of these Terms and Conditions. The Supplier shall, however, be bound by the agreed strict delivery period if the change or delay is of reasonably minor significance and does not result in a change in production capacity.
- 3 In performing the agreement, the Client is obliged to do everything that may reasonably be necessary or desirable in order to enable timely delivery by the Supplier. This applies in particular to promptly answering questions from the Supplier, preventing defective supplies as referred to in Article 6, paragraph 2 and to complying with the provisions of Article 11, paragraph 1 and Article 17, paragraphs 1 and 2 of these Terms and Conditions of Delivery.
- 4 If the Client does not comply with the provisions of the previous paragraph of this article and Article 7, paragraph 3, any agreed strict delivery period shall no longer be binding and the Client shall be in default without any written notice of default from the Supplier being required. In that case, without prejudice to the rights accruing to the Supplier under the law, the Supplier shall be entitled to suspend performance of the agreement until the Client has remedied this default. The Supplier shall then perform the agreement within a reasonable period.



- 5 If the Supplier suspends its obligations due to a breach by the Client other than that referred to in paragraph 4 above, the delivery period shall likewise be extended by the duration of the suspension.

#### Article 10: Inspection upon delivery

- 1 The Client is obliged, with all due speed after delivery, to investigate whether the Supplier has properly fulfilled the agreement. If this is not the case, the Client must inform the Supplier immediately in writing. The Client must in any event carry out this inspection and make the corresponding notification within 14 days of delivery.
- 2 The Supplier shall always have the right to substitute a new proper performance for a previous defective performance, unless the breach is incapable of remedy.
- 3 Performance of the agreement shall be deemed proper between the parties if the Client does not carry out the inspection and notification referred to in paragraph 1 of this article in good time.
- 4 It may happen that the 14-day period referred to in the first paragraph of this article must, according to standards of reasonableness and fairness, be considered unacceptably short even for a careful and alert Client. In that case, this period shall be extended to no later than the first point in time at which inspection or notification of the Supplier is reasonably possible for the Client.
- 5 The Supplier's performance shall in any event be deemed proper if the Client has put the goods delivered, or part of the goods delivered, into use, processed or treated them, supplied them to third parties, or caused them to be put into use, processed or treated, or supplied to third parties.
- 6 Without prejudice to provisions of mandatory law, complaints of whatever nature concerning the performance by the Supplier of the agreement or the proper fulfilment thereof by the Supplier shall not suspend the Client's payment obligation. Complaints may only be brought to the Supplier's attention in writing.
- 7 Without prejudice to provisions of mandatory law, the Supplier shall have no obligation whatsoever in respect of a claim submitted if the Client has not fulfilled all its obligations towards the Supplier (both financial and otherwise) fully and on time.
- 8 A claim by the Client relating to the quality of an item delivered by the Supplier and/or work carried out and/or services performed shall have no effect on items and/or work and/or services previously delivered or yet to be delivered, even if such items and/or work and/or services are or will be delivered in performance of the same agreement.
- 9 If items are missing upon delivery, the Client must likewise notify the Supplier of this in writing within 14 days of delivery. If notification is made after expiry of this period, the missing items shall not be credited to the Client, nor shall the items subsequently be delivered to the Client free of charge.

#### Article 11: Typesetting, printing or other proofs

- 1 The Client shall carefully check for errors and defects in the typesetting, printing or other proofs received from the Supplier, whether or not at the Client's request, and shall return these items, corrected or approved, to the Supplier with all due speed.

- 2 Approval of the proofs by the Client shall be deemed to constitute acknowledgement that the Supplier has correctly carried out the work preceding the proofs.
- 3 The Supplier shall not be liable for deviations, errors and defects that have remained unnoticed in proofs approved or corrected by the Client.
- 4 Each proof produced at the Client's request shall be charged in addition to the agreed price, unless expressly agreed otherwise.

#### Article 12: Deviations

- 1 Minor deviations between, on the one hand, the work delivered and/or items delivered/produced and/or work/services performed and, on the other, the original design, drawing, copy or model, or the typesetting, printing or other proof, shall not constitute grounds for rejection, price reduction, termination of the agreement or compensation.
- 2 In assessing whether deviations in the entire work or in the items delivered/produced or the work/services performed should be regarded as minor, a representative sample taken from the work shall be considered, unless individually specified items or work/services are concerned.
- 3 Deviations which, taking all circumstances into account, reasonably have no influence or only a subordinate influence on the utility value of the work or the items delivered/produced or the work/services performed shall always be deemed to be deviations of minor significance.
- 4 The Client shall take into account that the colours of printed products and layout files, as shown in (digitally) produced printing proofs or as displayed on a screen, will to some extent differ from the colour of the printed matter after production. Such deviations likewise cannot constitute grounds for rejection, price reduction, termination of the agreement or compensation.
- 5 Unless expressly agreed otherwise in writing, over- or underdeliveries in relation to the agreed quantity are permitted provided that they do not exceed the following percentages:
  - print run of up to 20,000 units: 10%
  - print run of 20,000 and above: 5%In the case of over- or underdeliveries of packaging printed matter, labels and continuous forms, a percentage of 10% shall always be permitted. The surplus or shortfall delivered shall be invoiced or set off accordingly.
- 6 With regard to the quality and grammage of paper and board, deviations within specific tolerances are permissible. In assessing this, the average of the total quantity delivered in one type, quality, colour and finish shall serve as the standard. If a minimum or maximum value has been agreed, then a double deviation upwards or downwards shall be permissible.
- 7 Deviations in other materials and semi-manufactures used by the Supplier which are permitted under the General Terms and Conditions of Sale applicable to the delivery of such materials and semi-manufactures to the Supplier shall be regarded as deviations of minor significance. The relevant conditions are available for inspection at the Supplier's

premises. At the Client's request, the Supplier shall send the Client a copy of these conditions free of charge.

#### Article 13: Continuing performance agreements; periodical publications

- 1 An agreement for the production of a periodical publication shall, unless expressly agreed otherwise in writing, be deemed to be for an indefinite period and may only be terminated by notice of termination with due observance of the notice period referred to in paragraph 2. This notice period may be departed from if the Client pays a one-off termination fee equal to 50% of the total amount invoiced by the Supplier in respect of the periodical publication over the entire preceding year.
- 2 The notice period shall be one year in the case of a periodical publication that appears four times a year or more frequently, and six months in the case of a periodical publication that appears less frequently.
- 3 A periodical publication as referred to in paragraph 1 of this article shall be understood to mean a publication that appears at least twice a year.
- 4 Production within the meaning of the first paragraph of this article also includes the production of semi-manufactures or tools such as loose sections, lithographic and typesetting work, as well as finishing work and work relating to the distribution of the publication.
- 5 An agreement as referred to in this article may only be terminated in writing. The burden of proof of termination shall lie with the Client.
- 6 The provisions of this article may only be departed from by written agreement. The notice period for agreements for the supply of services or the performance of work is by default six months. Furthermore, paragraphs 1 and 5 of this article shall also apply to such agreements.

#### Article 14: Intellectual property, etc.

- 1 The Client warrants to the Supplier that it is the holder of rights in respect of all items, in whatever form, received by the Supplier from or on behalf of the Client in the context of the agreement, and that there is no infringement of (intellectual property) rights of third parties. The Client indemnifies the Supplier, both in and out of court, against all claims that third parties may assert on that basis.
- 2 If the Supplier has reasonable doubts as to whether the Client is the rights holder as referred to in paragraph 1 of this article, the Supplier may suspend performance of the agreement until such time as it is unequivocally established that the Client is the rights holder. The Supplier shall then perform the agreement within a reasonable period.
- 3 Unless expressly agreed otherwise in writing, the Supplier shall at all times be the holder of the intellectual property rights arising in respect of the items produced, services provided and work performed by it in performance of the agreement.
- 4 The items supplied by the Supplier in the context of the agreement may not be reproduced within the framework of any production process without the Supplier's written consent. This is not permitted even if no copyright or other statutory protection exists for the Supplier in respect of the design.

- 5 Once the Client has fully fulfilled its financial obligations under the agreement, it shall, after delivery by the Supplier, acquire a non-exclusive, non-transferable right to use the items produced, services provided and work performed by the Supplier in the context of the agreement. This right of use comprises the right to normal use of the items delivered within the framework of the operation of the Client's business. The Client shall not otherwise reproduce these items or make them public without the Supplier's prior written consent.
- 6 The right granted to the Client under this article shall not affect the Supplier's right or ability to use and/or exploit, without any limitation, the components, general principles, ideas, designs, algorithms, documentation, programming languages, protocols, standards, know-how and the like underlying that development for other purposes. Nor shall the Supplier's right to carry out developments that are similar to and/or derived from those carried out or to be carried out for the Client be affected.
- 7 Even if the agreement does not explicitly provide for this, the Supplier shall always be entitled to implement technical measures to protect equipment, data files, websites and software.

#### Article 15: Ownership of production resources, etc.

- 1 All items produced by the Supplier shall remain the property of the Supplier, even if they are listed as a separate item in the offer or on the invoice.
- 2 The Supplier shall not be obliged to hand over or otherwise transfer to the Client the items referred to in paragraph 1.
- 3 The Supplier shall not be required to store the items referred to in the first paragraph of this article for the Client. If the Supplier and the Client agree that these items will be stored by the Supplier, this shall be for a maximum period of one year and without the Supplier warranting their suitability for repeated use.

#### Article 16: Property of the Client, right of pledge

- 1 The Supplier shall carefully store the items entrusted to it by the Client in the context of performance of the agreement.
- 2 Without prejudice to the provisions of the previous paragraph of this article, the Client shall bear all risks during storage in respect of the items referred to in paragraph 1. The Client shall, if desired, take out insurance for this risk itself.
- 3 The Client is obliged to ensure that a duplicate of copy, a drawing, design, photographic image or data carrier is made. The Client shall arrange this before handing over such items to the Supplier. The Client shall retain such duplicates in its possession in case the items handed over are lost during storage by the Supplier or become unusable due to damage. In that case, the Client shall, at the Supplier's request and against reimbursement of material costs, provide the Supplier with a new copy.
- 4 The Client grants the Supplier a right of pledge over all items which, in the context of performance of the agreement with the Supplier, are brought into the Supplier's possession by the Client, as well as over all other items which are the property of the Client and are brought into the Supplier's possession by the Client. The foregoing shall likewise apply to items delivered in respect of which the Supplier cannot invoke its

retention of title because the items delivered have been mixed, processed or incorporated. In this way the Supplier obtains additional security for payment of all that the Client, in whatever capacity and on whatever grounds, may owe the Supplier, including non-due and conditional debts.

#### Article 17: Materials, products, specifications and information supplied by the Client

- 1 If the Client has agreed with the Supplier that the Client will supply materials, (electronic) data or products for printing or processing, the Client shall ensure that they are supplied in good time and in a proper condition for normal, scheduled production. For this purpose, the Client shall receive instructions from the Supplier.
- 2 In addition to the materials or products required for the agreed performance, the Client is also obliged to supply a quantity reasonably required for the relevant processing for proofs, make-ready, etc. The Client shall receive the Supplier's statement in this respect. The Client warrants that the Supplier will receive a sufficient quantity. A confirmation of receipt of the materials or products by the Supplier shall not constitute acknowledgement that a sufficient quantity has been received, or that the quantity stated on the transport documents has been received.
- 3 The Client shall bear the risk of misunderstandings regarding the content and performance of the agreement if these are caused by specifications or other data not having been received, or not having been received correctly, on time or in full by the Supplier.
- 4 The Supplier shall not be obliged to examine items received from the Client prior to printing or processing as to their suitability for this purpose.
- 5 The Supplier cannot be held liable for failure to perform the agreement properly if this is caused by exceptional or reasonably unforeseeable processing difficulties resulting from the nature of the materials, (electronic) data or products supplied by the Client. Nor shall the Supplier be liable if this is the result of deviations between the sample or example initially shown to the Supplier and the materials, (electronic) data or products subsequently supplied by the Client.
- 6 The Supplier does not warrant characteristics such as durability, adhesion, gloss, colour, lightfastness or colour fastness, or resistance to wear, if the Client has not, at the latest upon entering into the agreement, provided details of the characteristics and nature of the materials or products it has supplied and/or has not provided proper information regarding the pre-treatments and/or surface treatments applied.
- 7 Unless expressly agreed otherwise, the Supplier cannot be held liable for peeling, sticking, smudging, changes in gloss or colour, or for damage to materials and products received from the Client for printing or processing if these have undergone a pre-treatment such as the application of varnish, lacquer or anti-set-off powder.
- 8 The Client is obliged to inform the Supplier in writing in advance of any particular difficulties or health risks during the printing or processing of the materials and products it has supplied.
- 9 The Supplier shall be entitled to dispose of waste such as cutting waste, etc. of the materials and products supplied by the Client as if it were the Supplier's property. If the

Supplier so requests, the Client shall collect the unused materials and products and the waste from the Supplier within the period specified by the Supplier.

#### Article 18: Force majeure

- 1 Failures by the Supplier in the performance of the agreement may only be attributed to the Supplier if they are due to its fault, or if they are at its expense pursuant to the law, the agreement or generally accepted standards. A failure in the performance of the agreement due to force majeure shall not constitute an attributable failure on the part of the Supplier.
- 2 Force majeure as referred to in paragraph 1 of this article shall in any event – and therefore not exclusively – include a failure resulting from war, mobilisation, civil commotion, flooding, closure of shipping routes, other disruptions in transport, delays in, or restriction or cessation of supply by public utilities, lack of gas, petroleum products or other means of energy generation, fire, machine breakdown and other accidents, excessive absence due to illness among staff, strikes, lock-outs, industrial action, export restrictions, other government measures, non-delivery of necessary materials and semi-manufactures by third parties, sabotage, intent or gross negligence on the part of auxiliary persons and other similar circumstances.
- 3 In the event of force majeure, the Supplier shall have the choice either:
  - to suspend performance of the agreement until the situation of force majeure has ceased to exist, or
  - to terminate the agreement in whole or in part, whether or not after first having opted for suspension.
- 4 In both cases, the Client shall not be entitled to any compensation. If the period during which performance of the Supplier's obligations is impossible due to force majeure lasts longer than thirty (30) days, the Client shall also be entitled to terminate the agreement in part (for the future), it being understood that, in accordance with paragraph 4 of this article, the Supplier shall be entitled to issue an invoice for items already delivered and/or work/services already performed. In the event of partial termination, there shall be no obligation to compensate any damage.
- 5 If, at the time force majeure occurs, the Supplier has already partially fulfilled its obligations or can only partially fulfil its obligations, it shall be entitled to invoice that part separately and the Client shall be obliged to pay this invoice as if it concerned a separate agreement.

#### Article 19: Liability

- 1 The Supplier shall be liable for damage suffered by the Client, provided that such damage is the result of a failure in the performance of the agreement that is attributable to the Supplier. However, only such damage shall be eligible for compensation as is covered by the Supplier's insurance or should reasonably have been covered by insurance, given the nature of the Supplier's business and the market in which it operates, and only up to the amount that the Supplier's insurer pays out in the case in question.
- 2 The following shall not be eligible for compensation for:

- a) financial loss, such as – but not limited to – business interruption loss, consequential loss, delay damage, lost profit, loss of turnover, loss of savings, reduced goodwill, reputational damage, damage relating to costs connected with interruption or standstill of (part of) the Client’s business and/or other indirect damage;
  - b) damage arising from acts or omissions of the Client and/or third parties in breach of instructions issued by the Supplier and/or in breach of the agreement and/or these Terms and Conditions of Delivery;
  - c) damage as a direct result of incorrect, incomplete and/or defective information provided to the Supplier by or on behalf of the Client;
  - d) damage as a result of or in connection with cybercrime committed against the Supplier or cybercrime of which the Supplier has become a victim, insofar as the Supplier is liable for such damage. Such damage includes, among other things:
    - damage as a result of or in connection with unauthorised access to an automated system (Article 138ab of the Dutch Criminal Code);
    - hindering access to or use of an automated system (Article 138b of the Dutch Criminal Code);
    - destroying or damaging any automated system or any telecommunications system or rendering it unusable;
    - causing a disruption in the operation or functioning of such a system or frustrating a security measure taken in relation to such a system (Articles 161sexies and 161septies of the Dutch Criminal Code);
    - unlawfully altering or deleting data, rendering it unusable or inaccessible or adding other data thereto and/or making data available or disseminating data intended to cause damage in an automated system (by self-replication (computer viruses)) (Article 350a of the Dutch Criminal Code).
- 3 If
- a) at the time of entering into the agreement, the Supplier was unable to take out insurance as referred to in paragraph 1 of this article, or was unable to renew such insurance on reasonable terms thereafter;  
or
  - b) the insurer does not pay out for the damage concerned;  
or
  - c) the damage concerned is not covered by the insurance, then compensation shall be limited to the amount agreed by the Supplier with the Client for the (present) agreement (excluding VAT).
- 4 After delivery, the Supplier shall no longer be liable for damage of whatever nature.
- 5 The Supplier shall likewise not be liable for damage to materials or products it receives from the Client for printing, processing or handling if the Client has not, at the latest upon entering into the agreement, provided details of the characteristics and nature of these materials or products and proper information regarding the pre-treatments and surface treatments applied.
- 6 If the Supplier is held liable by a third party in respect of any damage for which the Supplier would not be liable under the agreement with the Client and/or these Terms



and Conditions of Delivery or otherwise vis-à-vis the Client, the Client shall fully indemnify the Supplier in this respect and reimburse the Supplier for everything it is obliged to pay to this third party.

#### Article 20: Security

- 1 If, under the agreement, the Supplier is obliged to provide any form of information security, such security shall comply with the specifications concerning security agreed in writing between the parties. The Supplier does not warrant that the information security will be effective under all circumstances. If the agreement does not describe the method of security in explicit terms, the security shall meet a level that is reasonable in view of the state of the art, the sensitivity of the data and the costs associated with implementing the security.
- 2 Access or identification codes and certificates provided by or on behalf of the Supplier to the Client are confidential, shall be treated as such by the Client and shall only be disclosed to authorised employees within the Client's own organisation. The Supplier shall be entitled to change assigned access or identification codes and certificates. If the Client or its auxiliary persons fail to comply with this article, the Client shall be liable for any damage whatsoever suffered by the Supplier as a result.
- 3 The Client shall adequately secure its systems and infrastructure, update them in a timely manner and have antivirus software in operation at all times.

#### Article 21: Processing of personal data

- 1 If the Supplier processes personal data (as referred to in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the 'GDPR')) or has such data processed, the Supplier shall, in relation to the processing of such data, comply with the legislation and regulations applicable thereto. In that case, the Supplier shall be regarded as a processor within the meaning of the GDPR and shall fulfil its obligations as such. In that event, a data processing agreement shall be concluded between the Supplier and the Client.
- 2 The Client is obliged, in relation to the processing of the personal data referred to in paragraph 1 of this article, to comply with the legislation and regulations applicable thereto. The Client is fully responsible and liable for the fulfilment of its obligations arising from the aforementioned legislation and regulations.
- 3 In processing the personal data referred to in paragraph 1 of this article, the Client warrants that the processing of personal data is lawful and does not infringe the rights of the data subjects concerned. The Client indemnifies the Supplier against any claims by data subjects or third parties resulting from the Client's failure to comply with the applicable legislation and regulations, including but not limited to the GDPR. The Supplier shall only be liable for damage caused by its own processing of personal data if, in the processing, the specific obligations of the GDPR directed at the Supplier as processor have not been complied with, or if the Supplier has acted outside or contrary to the Client's lawful instructions.



#### Article 22: Confidentiality

- 1 Both parties are obliged to maintain confidentiality with regard to all confidential information that they have obtained from each other or from another source in the context of the agreement. Information shall be regarded as confidential if this has been communicated as such by one of the parties or if this follows from the nature of the information.
- 2 If the Supplier is required, pursuant to a statutory provision or a court order, to disclose confidential information to third parties designated by law or by the competent court, and the Supplier cannot invoke a right to refuse disclosure recognised or permitted by law or by the competent court, the Supplier shall not be obliged to pay any damages or compensation. In such a case, the Client shall likewise not be entitled to terminate the agreement, without prejudice to provisions of mandatory law.

#### Article 23: Limitation periods

- 1 Without prejudice to provisions of mandatory law, legal actions and other powers of the Client against the Supplier, on whatever grounds, in connection with items produced/delivered and/or work/services performed shall lapse six (6) months after the date on which the Client became aware or could reasonably have become aware of the existence of these rights and powers, if the Client has not lodged a written claim with the Supplier before the expiry of this period.
- 2 If the Client has lodged a written claim with the Supplier in connection with items produced and/or work/services performed by the Supplier within the period referred to in paragraph 1 of this article, then, without prejudice to provisions of mandatory law, any legal action of the Client in that respect shall lapse if the Supplier has not been involved in legal proceedings before the court with jurisdiction under Article 25 of these Terms and Conditions of Delivery within four (4) months of receipt of the claim concerned.

#### Article 24: Termination

- 1 The Client shall be in default by operation of law if it fails to comply, or fails to comply fully, with any obligation whatsoever arising from the agreement. In that case, the Supplier shall have the right, without further notice of default and without judicial intervention, to terminate the agreement unilaterally, in whole or in part, by means of written notice to the Client and/or to suspend its obligations under the agreement. In doing so, the Supplier shall not be liable for any damages and shall retain all rights accruing to it, including the right to full compensation for damage. All claims that the Supplier may have or acquire against the Client in such cases (including, but not limited to, amounts which the Supplier has invoiced prior to termination of the agreement in connection with what it has already duly performed or delivered in execution thereof) shall then become immediately and fully due and payable.
- 2 The Client shall be in default by operation of law and the Supplier shall have the right, without further notice of default and without judicial intervention, to terminate the agreement unilaterally, in whole or in part, by means of written notice, without the

Supplier being obliged to pay any compensation and without prejudice to its further rights, including the Supplier's right to full compensation, in the following situations:

- (the filing of a petition for) bankruptcy of the Client, (the request for) suspension of payments of the Client, or, insofar as the Client is a natural person, the Dutch Natural Persons Debt Restructuring Act (WSNP) becoming applicable to the Client, or the Client's death; or
  - attachment of a substantial part of the Client's assets, or a situation in which the Client can no longer reasonably be deemed able to fulfil the obligations under the agreement; or
  - cessation of operations, liquidation or full or partial transfer, direct or indirect change of control or any comparable situation of the Client's business; or
  - discontinuation of the Client's business. In all such cases, the Client shall be in default by operation of law and the Supplier shall have the right, without further notice of default and without judicial intervention, to terminate the agreement unilaterally, in whole or in part, by means of written notice, without the Supplier being obliged to pay any compensation and without prejudice to its further rights, including the Supplier's right to full compensation.
- 3 If the Client is declared bankrupt by a final and unappealable court decision, then, where applicable, the right to use the software, websites and the like made available, as well as the use of the Supplier's services, shall end without any act of termination being required.

#### Article 25: Applicable law

- 1 The agreement between the Supplier and the Client shall be governed by Dutch law.
- 2 The Dutch courts shall have jurisdiction to hear all disputes arising from or related to the performance of the agreement between the Supplier and the Client. The competent court shall be the court in the district in which the Supplier is established, unless the Client is a consumer and, within one month after the Supplier has invoked this jurisdiction clause in writing towards the Client, the Client opts for resolution of the dispute by the court that is competent according to the law.