

# General Terms and Conditions

November, 2019

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## 1 Definitions

1.1 In these general terms and conditions of sale and delivery, the following definitions apply:

- a. Mark Offshore: the private company Mark Offshore B.V., established in Alkmaar, Chamber of Commerce number 65289455, or (legal) persons and companies affiliated with MO that are parties to the agreement to which these general terms and conditions apply;
- b. The client: the (legal) person or company that buys goods from Mark Offshore and/or orders Mark Offshore to manufacture and/or deliver goods and/or perform work, such as - including - online marketing activities, acquisition activities, communication and promotion activities, the organization of events and campaigns, the production and management of websites, delivery of standard marketing products;
- c. assignment and/or agreement: any agreement between Mark Offshore and the client concerning the purchase and sale of goods and/or execution of work by Mark Offshore, unless the parties have explicitly agreed otherwise in writing;
- d. the general terms and conditions: the present general terms and conditions of sale and delivery used by Mark Offshore.

## 2 Applicability

2.1 These terms and conditions apply to all assignments made to Mark Offshore. In addition to Mark Offshore, all persons involved in the execution of an assignment from a client can invoke these general terms and conditions.

## 3 Agreement

3.1 All assignments are only accepted and carried out by Mark Offshore. This also applies if it is the express or implied intention that an assignment is carried out by a specific person associated with Mark Offshore. The applicability of Article 7: 404 of the Dutch Civil Code, which provides for a regulation in the latter case, and of Article 7: 407 (2) of the Dutch Civil Code, which establishes joint and several liability for cases in which two or more persons are given an assignment, is excluded. Persons affiliated with Mark Offshore are understood to mean the employees, advisers, directors and shareholders of Mark Offshore.

3.2 Mark Offshore carries out assignments exclusively for the benefit of the client. If two or more persons have jointly issued an assignment, they are each jointly and severally liable for the obligations arising from the assignment agreement with Mark Offshore.

3.3 When carrying out the assignment, Mark Offshore may assume the accuracy and completeness of the information provided by or on behalf of the client, unless explicitly stated otherwise.

3.4 The execution of the assignment given is exclusively for the benefit of the client. Third parties cannot derive any rights from the performance of work performed for the client.

3.5 The client is continuously obliged to (i) timely and complete provision of the required information, responses, goods and cooperation with Mark Offshore, (ii) good accessibility and availability during regular working days and times for the required provision of information to and consultation with Mark Offshore and (iii) prompt and adequate response to questions and provision of information from Mark Offshore, and in such a way that Mark Offshore is properly given the opportunity to deliver its goods and work in accordance with the agreement. Non-compliance with these obligations does not relieve the client of its (payment) obligations.

## 4 Implementation by third parties

4.1 Mark Offshore is entitled to have assignments granted carried out under its responsibility by its (indirect) shareholders, its directors and staff members and, where appropriate, by engaging third parties.



4.2 If Mark Offshore engages a person not associated with it in the performance of an assignment, then Mark Offshore is not liable to the client for any mistakes made by this person. It is possible that persons who are involved in the execution of an assignment from a client want to limit their liability in connection therewith. Mark Offshore assumes, and where necessary stipulates, that all assignments given to it by the client include the authority to accept such a limitation of liability also on behalf of those clients.

4.3 Mark Offshore is only liable for shortcomings of engaged third parties, if and insofar as the resulting damage can be recovered from the third party.

## 5 Cancellation

5.1 Cancellation of an assignment is only possible if the assignment has not yet been fully or partially implemented by Mark Offshore.

## 6 Rates

6.1 Unless otherwise agreed, the prices quoted are based on the factual information relevant to the order confirmation for the performance of the agreement and on the continued cooperation of the client as referred to in Article 3.5. In the event of a change in the principles and in the case of a supplement and/or changes to an assignment by or on behalf of the client, Mark Offshore is entitled to increase the prices and rates agreed with the client accordingly.

6.2 Mark Offshore is entitled to annually increase the agreed prices, up to a maximum of 3.5%.

## 7 Delivery

7.1 Specified and agreed delivery times and other times are set by Mark Offshore as an approximation and never count as a deadline. There can only be a strict deadline if Mark Offshore determines an exact delivery date in the order confirmation, which is also explicitly designated as a strict deadline.

7.2 The delivery time is determined in the expectation that Mark Offshore can continue to work, as was foreseen at the time of the offer and that the goods to be purchased from third parties are delivered to Mark Offshore on time and that third parties commissioned by Mark Offshore activities to be performed are done on time.



7.3 If this expectation turns out to be incorrect, even if it is the result of circumstances already foreseen at the conclusion of the agreement, the delivery time will be extended by the same number of days as the delay occurred.

7.4 The delivery time will also be extended if the client changes the order after the conclusion of the agreement or otherwise delays the execution thereof.

7.5 If the client is of the opinion that the exceeding of the approximate delivery time set by Mark Offshore must be regarded as unreasonably onerous for him, the client is obliged to set Mark Offshore a reasonable delivery time by registered letter.

## 8 Payment terms

8.1 The client must pay the invoices of Mark Offshore within 14 days after the invoice date by deposit or transfer to the bank account stated on the invoice, unless agreed otherwise. The value date indicated on the bank statements of Mark Offshore is considered to be the day of payment. If payment by direct debit has been agreed, the client must constantly ensure that there is a sufficient balance in the bank account to enable direct debit. The client may not automatically reverse any amounts collected.

8.2 The client must pay the invoices of Mark Offshore without suspension, discount or settlement.

8.3 If the agreed payment period is exceeded, the client will be in default from the day that period expires, without any further notice of default from Mark Offshore being required.

8.4 Payments made by the client always serve to reduce the costs, subsequently to reduce the interest due and finally to reduce the principal sum and the current interest, to settle all owed costs, then all owed interest and finally the principal sum, all in the order of the invoices that have been outstanding the longest. This also applies if the client indicates otherwise in his payment.

8.5 In the event of non or late or improper fulfilment of any obligation placed on the client towards Mark Offshore; passing away; sustainable disability; if the client is placed under administration, management or guardianship; (an application for) suspension of payment, bankruptcy and/or debt restructuring; attachment charged to the client; full or partial transfer and/or strike of the client's company; merger, division and dissolution of the client; in the event of control of the client's company transfer directly or indirectly to one or more others, as referred to in the SER Merger Code 2015, even if those rules do not apply and/or the client's apparent creditworthiness is reduced, Mark Offshore are entitled to terminate all current agreements or



parts thereof that are still to be executed at that time with immediate effect by means of an extrajudicial declaration, without any judicial intervention being required and without prejudice to its right to claim damages.

8.6 In every situation referred to in Article 8.5, any claim that Mark Offshore has against the client is immediately and fully claimable.

8.7 In every situation referred to in article 8.5, Mark Offshore has the right to put delivered goods and activities out of use and/or limit their use. Mark Offshore will inform the client of this in advance, unless it cannot reasonably be expected of it. Decommissioning or limitation does not affect the client's payment obligations. For cancelling the decommissioning or limitation, Mark Offshore may request a reasonable fee to be paid in advance.

8.8 All legal costs of Mark Offshore with regard to the collection of the amount due and not paid on time to Mark Offshore will be borne by the client. The legal costs are set at the actual costs incurred by Mark Offshore.

8.9 Mark Offshore is entitled at all times, both before and after entering into an agreement with the client, before (further) performance, to demand an immediately payable advance and/or security, which advance and/or security ( in the opinion of Mark Offshore) offers sufficient coverage for all existing and future obligations of the client towards Mark Offshore.

## 9 Force majeure

9.1 In the implementation of the agreement, force majeure will be understood to mean circumstances that prevent Mark Offshore from fulfilling the agreement and that cannot be attributed to Mark Offshore.

9.2 Force majeure as referred to in the previous paragraph also includes international conflicts, violent or armed conflicts, terrorism, measures taken by any domestic, foreign, supranational or international government, boycott actions, labour disagreements and incapacity for work by third parties or among their own staff, natural disasters and other external calamities, fire, water damage, stagnation and/or delay in the supply of goods, lack of shipping space, disruptions in the electricity supply, in communication connections or in other equipment or software of Mark Offshore. Force majeure occurs when Mark Offshore relies on this, stating reasons, without prejudice to the client's right to prove the contrary.

9.3 If such a circumstance occurs, Mark Offshore will take those measures that can reasonably be required of it to limit the client's damage.



9.4 During force majeure the delivery obligations and other obligations of Mark Offshore are suspended. If the period in which the fulfilment of the obligations by Mark Offshore is not possible due to force majeure lasts longer than two months, both parties are entitled to terminate the agreement without judicial intervention, without there being any obligation to compensate for damages and costs.

9.5 If, upon commencement of the force majeure, Mark Offshore has already partially met its obligations, or can only partially meet its obligations, it is entitled to separately invoice the already delivered or the deliverable part and the client is obliged to accept this invoice as if it is a separate agreement.

## 10 Liability limitation

10.1 If Mark Offshore fails in any way in the fulfilment and/or delivered goods and work do not comply with the agreement and the client has complained about this in time, Mark Offshore - at its option - is only obliged to remedy the shortcoming or repair of the relevant defect or to replace the delivered goods or to credit a proportional part of the invoice. Mark Offshore will be given the opportunity at all times by the client - on pain of forfeiture of any right of the client arising out of or in connection with the defect - to make Mark Offshore as necessary to remedy, repair, replacement and/or credit. Any liability of Mark Offshore is limited to this.

10.2 Mark Offshore is not liable for damage resulting from or related to the transmission of confidential or secret information via the internet, storage of such information in the cloud and misuse of such information by third parties.

10.3 Mark Offshore can only be liable to the client for direct damage, which is the direct and immediate result of a shortcoming attributable to Mark Offshore. Mark Offshore is in no way liable for consequential damage, which in this context is understood to include business damage, lost profit, turnover damage, reputation damage, stagnation damage, research costs, damage as a result of claims by any third party on the client, damage with regard to a product recall, damage as a result of missed orders, lost savings, lost data, non-earned investments and late deliveries, all as a result of or in the broadest sense related to the goods delivered and/or work performed by Mark Offshore.

10.4 If no successful appeal can be made to the liability limitation referred to in the previous paragraphs, the liability of Mark Offshore as a whole is in any case limited to the amount invoiced by Mark Offshore to the client in respect of the relevant agreement excluding sales tax.



10.5 If no successful appeal is possible to the liability limitation referred to in the previous paragraphs, the liability of Mark Offshore as a whole is in any case limited to the payment that takes place under the insurance of Mark Offshore against liability, plus the amount of any applicable deductible.

10.6 If for any reason whatsoever no payment is made under the liability insurance, the aforementioned liability is limited in its entirety to a maximum of € 25,000.

10.7 In cases where Mark Offshore is sued by third parties for damage caused by goods and/or work that Mark Offshore has delivered to or has performed for the client, the client unconditionally indemnifies Mark Offshore for the consequences of claims from third parties arising from or in connection with the execution of an agreement by Mark Offshore, including the costs of legal assistance, in those cases in which Mark Offshore is not (any longer) liable to the client, or on the basis of these terms or otherwise.

10.8 Mark Offshore is not liable for damage to third parties that is caused by violation of patents, copyrights and/or other industrial and intellectual property rights through the use of materials, information, software or parts, or by applying methods that apply to Mark Offshore has been provided or prescribed by or on behalf of the client. The client is obliged to unconditionally indemnify Mark Offshore against these claims.

10.9 If Mark Offshore is nevertheless obliged to pay compensation to third parties, Mark Offshore has the right of recourse against the client. This right of recourse also extends to the compensation to be paid and/or paid by Mark Offshore, interest and judicial and extrajudicial costs.

10.10 For the purposes of applying the provisions of the general terms and conditions, the concept of damage is also understood to mean any other claim by the client that would result in Mark Offshore owing the client any amount. So regardless of whether this is demanded on the basis of (or under the heading of) non-performance, unlawful act or a (repayment) payment obligation as a result of total or partial dissolution, total or partial destruction or unjustified enrichment.

10.11 All claims of the client expire if they have not been submitted to Mark Offshore in writing and with reasons within 13 months after the client was known or should have been reasonably aware of the facts on which he bases his claim.

10.12 Any exclusion and limitation of liability in the general terms and conditions does not apply in the event of intent and/or deliberate recklessness on the part of Mark Offshore and/or senior management members of its management or management and/or if and to the extent that this is contrary to would come with the provisions of Article 6: 192 and/or 7:25 paragraph 2 of the Dutch Civil Code and/or any other mandatory provision.



10.13 The client waives the right to demand or demand adjustment of (the consequences of) an agreement with Mark Offshore on the basis of 6: 230 paragraph 2 and/or 6: 258 and/or 3:53 paragraph 2 BW.

## **11 Amendment of general terms and conditions**

11.1 Mark Offshore has the right to change the terms and conditions. The amended general terms and conditions will be filed at the registry of the Amsterdam District Court. In the event that Mark Offshore sends the thus amended general terms and conditions to the client, these will be binding on Mark Offshore and the client as of the thirtieth day after the date of dispatch, also for agreements already concluded, unless the client has amended the general terms and conditions does not wish to accept and has made this known in writing or by e-mail before the said thirtieth day.

## **12 Disputes**

12.1 On all offers, agreements and their implementation, on which the general terms and conditions relate wholly or in part, only Dutch law applies. The provisions of the Vienna Sales Convention (Convention on the International Sale of Goods) are not applicable, nor are any future international regulations concerning the purchase of movable tangible property, the effect of which can be excluded by the parties.

12.2 All disputes arising from and/or related to the agreement concluded between the parties, including the mere recovery of the amount due, will only be submitted to the civil court competent in the place of establishment of Mark Offshore, insofar as the law permits this, without prejudice to the right of Mark Offshore to apply to the court that has jurisdiction in the client's place of business.