

# GENERAL TERMS AND CONDITIONS

2019

## *Article 1*

1.1 These terms and conditions apply to all quotations and all agreements of any kind between Sunshower B.V. and its contracting party, to the extent that the parties have not expressly deviated from these terms and conditions.

1.2 The applicability of general terms and conditions that the contracting party invokes is expressly rejected.

1.3 If any provisions of these general terms and conditions are null and void or annulled, the remaining provisions of these general terms and conditions will remain in force and Sunshower B.V. and its contracting party will consult each other in order to agree new provisions to replace the null and void or annulled provisions, taking the purpose and purport of the original provisions into account as much as possible.

## *Article 2*

2.1 All Sunshower B.V. quotations are without obligation.

2.2 The prices stated in the quotation only relate to those products and/or activities that are expressly defined in the quotation, and are excluding VAT and freight costs, unless stated otherwise.

## *Article 3*

3.1 Agreements, including any changes or additions to agreements, are only binding on Sunshower B.V. once they have been laid down in writing in a contract signed by the parties or in an order confirmation signed by Sunshower B.V.

3.2 A written order confirmation from Sunshower B.V. counts as a complete and correct recording of the content of the concluded agreement, unless the contracting party submits its objections to Sunshower B.V. in writing within two calendar days of sending this confirmation.

## *Article 4*

4.1 Agreed prices are based on the prices of materials, wages and the like that are valid at the time the agreement is concluded. Unless expressly confirmed otherwise in writing, the prices are also based on delivery ex factory, which means delivery ready for dispatch at the factory of the manufacturer of the products to be supplied by Sunshower B.V. The costs of loading and unloading and transporting the goods are not included in the price and the client will be charged separately for this if Sunshower B.V. is responsible for loading, unloading and transporting the goods.

4.2 The price for the delivery of the goods, which Sunshower B.V. is to deliver pursuant to the agreement between the parties, is also exclusive of the costs of and/or remuneration for any additional work to be performed by Sunshower B.V.

4.3 If, after the date of the quotation or the agreement and before the time that the agreement has been fully implemented, the prices of materials, aids, parts and raw materials, wages, social security costs, semi-government and government levies, freight, insurance premiums or other cost components, including price increases as a result of the depreciation of the Dutch currency, are increased, even if it is due to foreseeable circumstances, Sunshower B.V. is entitled to increase its prices accordingly, even if fixed prices have been agreed.

## Article 5

5.1 The delivery time starts at the following times at the latest:

- a. the day of concluding the agreement;
- b. the day Sunshower B.V. receives the documents necessary for the implementation of the agreement;
- c. the day Sunshower B.V. receives the sum for instalments agreed under the agreement, which the contracting party must settle before Sunshower B.V. starts implementing the agreement.

5.2 An agreed delivery time is always indicative and not a final deadline.

5.3 Sunshower B.V. is always entitled to suspend the implementation of agreements due to a delay in the manufacture or dispatch or other circumstances that lead to delays, which temporarily prevent or delay delivery, without Sunshower B.V. being liable to pay compensation as a result of this suspension.

5.4 Unless otherwise agreed, delivery takes place ex factory, being the factory of the producer engaged by Sunshower B.V. to produce the product.

5.5 Exceeding the delivery time, regardless of the reason, does not entitle the contracting party to non-compliance with any commitments it has entered into vis-à-vis Sunshower B.V.

## Article 6

6.1 Immediately after the goods are considered delivered within the meaning of Article 5.4, the contracting party bears the risk for all direct and indirect damage to these goods or parts or caused by these goods or parts.

6.2 However, ownership of the goods, be they processed or unprocessed, will only transfer to the contracting party once the contracting party has paid Sunshower B.V. in full the amounts due pursuant to the agreement, including interest, costs and claims. Despite this retention of title, the contracting party is entitled to deliver products to be supplied by Sunshower B.V. to its customers in the course of its normal business operations if the contracting party has met its payment obligations, such as those arising from Article 8.1, or if the contracting party has paid 50% of the price owed. If the contracting party fails to fulfil its obligations towards Sunshower B.V., or fails to fulfil these obligations in good time, Sunshower B.V. is entitled and is, insofar as necessary, irrevocably authorised by the contracting party to dismantle and take possession of the goods it has delivered. In this case, the agreement will be terminated without judicial intervention, without prejudice to Sunshower B.V.'s right to compensation of damages and expenses.

6.3 As long as this retention of title applies, the contracting party is obliged to insure the products properly against theft, damage and loss, among other things.

6.4 As long as the contracting party has not fully settled the payment for a product, the contracting party is obliged to pledge to Sunshower B.V. its claim against the party to whom it has sold the product.

## Article 7

7.1 The assembly of the goods is for the account and risk of the contracting party. Only a specialised company is permitted to carry out the electronic installation, with due observance of the legal guidelines and the national regulations concerning the installation. Furthermore, the contracting party is obliged to follow the installation instructions that Sunshower B.V. has provided.

## Article 8

8.1 Unless expressly agreed otherwise in writing, payment of the agreed price will be made as follows:

Sunshower B.V. must receive full payment before delivery will commence.

8.2 All payments must be made without any discount, settlement or suspension being applied.

8.3 If the contracting party does not pay within the agreed period, it will be in default by operation of law, without any prior notice of default, and Sunshower B.V. will be entitled to charge the contracting party interest from the final due date for the payment, up to an interest rate of 3% above the statutory interest rate, without prejudice to the rights that Sunshower B.V. is furthermore entitled to.

8.4 If the contracting party is subject to liquidation, bankruptcy or suspension of payment, its obligations will be immediately due and payable.

8.5 The costs, both in and out of court, due to the contracting party not fulfilling its obligations at all, in good time or properly are for the account of the contracting party. If the contracting party fails to pay the amount due to Sunshower B.V. or fails to do so in good time,

the extrajudicial costs between the parties are fixed in advance at an amount equal to 15% of the amount due, with a minimum charge of €500.

#### Article 9

9.1 After delivery of the goods, Sunshower B.V. is no longer liable for defects in the goods, unless the contracting party is entitled to invoke the following guarantee provisions.

9.2 With due observance of the limitations set out below and other limitations and exclusions arising from these terms and conditions, Sunshower B.V. guarantees the soundness of the delivered goods and of the additional work that it carries out for 24 months from the date the goods were delivered. Sunshower B.V. cannot vouch for the results to be achieved with the goods or the effectiveness of the goods.

9.3 Sunshower B.V. will remedy all defects free of charge that the contracting party can prove arose within the aforementioned guarantee period, and that are exclusively or predominantly a direct result of a fault in the structure that Sunshower B.V. designed, or as a result of a defective finish or use of poor material. The contracting party must at all times give Sunshower B.V. the opportunity to remedy defects. Without prejudice to the provisions of the first paragraph of this article, Sunshower B.V. does not provide more guarantees for the materials and/or items obtained from third parties than the guarantees given to Sunshower B.V. by the manufacturer or producer.

9.4 The obligations for Sunshower B.V. arising from these guarantee provisions will at all times be limited to replacing or repairing the product in question or to payment of the costs involved in the repair. The choice between the various options will be made by Sunshower B.V. The contracting party has the duty to ensure that Sunshower B.V. is given the opportunity to meet these obligations.

9.5 The contracting party may only return the products for which a guarantee is invoked once it has Sunshower B.V.'s prior permission. Returned products that are not considered to be defective will be returned to the contracting party at the latter's expense; the contracting party will also be charged for the costs incurred by Sunshower B.V. for the investigation instigated because of the complaint.

9.6 The Sunshower B.V. guarantee does not apply to normal wear and tear, improper or incorrect installation, improper or incorrect treatment or use, improper or incorrect maintenance, or if the item has been used for purposes other than normal use or has not been used correctly, or if the contracting party or the contracting party's customer, or subsequent customers, or the end user does not strictly observe the operating instructions provided by Sunshower B.V. The contracting party is therefore responsible for ensuring that subsequent links in the supply chain comply with the operating instructions.

9.7 If for whatever reason Sunshower B.V. is unable to supply parts of the goods to replace the delivered parts of goods under the guarantee, and if the hindrance can reasonably be assumed to be temporary, the guarantee obligations will be suspended until the hindrance has been addressed. If, on the other hand, it can reasonably be assumed that the impediments are permanent in nature, Sunshower B.V. will compensate the monetary value of the parts, being the original cost price paid by Sunshower B.V., for these or similar parts of goods.

9.8 Complaints raised by the contracting party about visible defects must be submitted in writing within 24 hours of the delivery of the goods. Failure to do so will result in the lapsing of the claim for these defects under the guarantee. Complaints raised by the contracting party about non-visible defects must be made within two days of discovery, by registered letter stating reasons. Failure to do so will also result in the lapsing of the claim for these defects under the guarantee.

9.9 Furthermore, any claim under the guarantee expires:

- a. if the installation of the product at the end user is not done by a specialised company;
- b. the contracting party does not immediately give Sunshower B.V. the opportunity to investigate the complaints and to remedy any defects;
- c. the contracting party fails to fulfil any obligation either at all, in good time or properly that it has with Sunshower B.V. under the agreement concluded or under other agreements with Sunshower B.V.;
- d. if the end user of the goods does not adhere to the information in the user manual provided by Sunshower B.V.

9.10 After repair or replacement within the context of this guarantee scheme, the guarantee period will not be extended and the guarantee ends at the time that the original period was due to end.

#### Article 10

10.1 Sunshower B.V.'s liability under the agreement is expressly limited to meeting its guarantee obligations described in the previous

article of these terms and conditions. All claims for compensation are excluded, except for claims for alternative compensation for non-compliance with these guarantee obligations. All claims for trading loss or other indirect damages are also excluded.

10.2 If Sunshower B.V. gives advice, it is liable for damages that are the direct result of a demonstrably attributable shortcoming on its part with regard to this advice if and to the extent that the shortcoming should have been avoided under the given circumstances and with normal professional knowledge and attention. This liability is capped at the amount charged separately for the advice. Sunshower B.V. is not liable in other cases and for other damages as a result of the advice it has provided.

10.3 If Sunshower B.V. or its employees or subordinates for whom Sunshower B.V. can be held legally liable commit a wrongful act, Sunshower B.V. is only liable for compensation for damages due to death or physical injury and for other damages due to intent or gross negligence.

10.4 Insofar as Sunshower B.V. is obliged to pay any amount on the grounds of liability, this amount will always be limited to the amount that is paid out under the corporate liability insurance for the case in question.

10.5 Sunshower B.V.'s liability for wrongful acts other than those referred to in Article 10.3 and 10.4 is expressly excluded.

#### *Article 11*

11.1 All intellectual or industrial property rights to the products to be delivered under the agreement, and related designs, documentation, reports, quotations, and preparatory material, are vested exclusively in Sunshower B.V.

11.2 All documents that Sunshower B.V. gives to the contracting party, such as reports, agreements and the like, are exclusively intended for the contracting party's use and the contracting party may not reproduce, disclose or divulge these documents to third parties without Sunshower B.V.'s prior written permission.

11.3 The contracting party is not permitted to remove any identifying marks concerning the intellectual property rights to the products or product packaging.

11.4 The contracting party will treat as confidential all information given to it by Sunshower B.V. and keep it confidential, unless the information obtained is intended by its nature to be made public.

11.5 Sunshower B.V. guarantees that the goods produced and delivered by it as such do not infringe the intellectual property rights of third parties. If it is irrevocably established that an item delivered by Sunshower B.V. infringes the intellectual property rights of a third party, Sunshower B.V. will, after conferring with the contracting party if it so decides, replace the item in question with an item that does not infringe the right in question, or acquire a user right from the third party concerned, or return the purchase price to the contracting party. Apart from applying one of these three options, Sunshower B.V. is not liable vis-à-vis the contracting party.

#### *Article 12*

12.1 In these terms and conditions, force majeure means any circumstances beyond the control of Sunshower B.V., even if they were foreseeable at the time of the conclusion of the agreement, that permanently or temporarily prevent the implementation of the agreement, also insofar as they are not already included: war, threat of war, civil war, insurrection, strikes, lock-out of employees, transport difficulties, fire, unworkable weather and other disruptions in Sunshower B.V.'s company or its suppliers' companies.

#### *Article 13*

13.1 If the contracting party fails to comply at all, in good time or properly with any obligations it has towards Sunshower B.V., if it reaches a debt settlement with its creditors, requests suspension of payment, is declared bankrupt, terminates its business or disposes of it, or (if it is a company) it is dissolved, or it dies, is placed under forced administration, or if its movable or immovable property is seized, or the contracting party relocates its domicile abroad legally or de facto, or other circumstances come to light after the conclusion of the agreement with Sunshower B.V. that give it good reason to fear that the contracting party will not fulfil its obligations, the contracting party is deemed to be in default by operation of law and Sunshower B.V. is entitled to suspend the further implementation of the agreement without any notice of default or judicial intervention and/or to proceed to the full or partial termination of the agreement, all without prejudice to Sunshower B.V.'s right to claim damages.

#### *Article 14*

14.1 The quotation/agreement and any subsequent agreements are governed by Dutch law.

14.2 All disputes, including those that are only considered as such by one of the parties, arising as a result of the quotation/agreement and subsequent agreements between the parties, will be settled by the competent court in the Court District of The Hague.

14.3 In the event of any conflict between this English translation and the original Dutch version of these terms and conditions, the Dutch version will prevail.