

TERMS AND CONDITIONS

Initium Novum BV h.o.d.n. Aquasystems established in Dodewaard

ARTICLE 1 APPLICABILITY

1.1

These general terms and conditions are applicable to all offers, orders, purchase or sales agreements, contracts which Aquasystems established in Dodewaard, further referred to as "us", "our" or "we", makes, has made and/or enters into and/or has entered into with the other party.

1.2

Deviations from and/or additions to these terms and conditions shall only apply if confirmed by us in writing. These deviations and/or supplements then only apply to that agreement in which the deviating stipulations are made. Purchase and/or other conditions of the other party only apply insofar as they are in accordance with these general terms and conditions and, insofar as this is not the case, are hereby explicitly rejected by us. In case of doubt as to whether a conflict exists, only these general terms and conditions shall apply. Doubt shall exist if we are of that opinion unless the other party can provide evidence to the contrary.

1.3

If any provision or part thereof in this agreement is void, annulled or otherwise non-binding or unworkable, this shall not affect the validity of the applicability of the remaining provisions. In the event of a void, voided or non-binding provision, the parties shall consult with each other with a view to agreeing a new provision that corresponds as closely as possible to the original provision in terms of purpose and scope.

1.4

The "headings" above the articles are intended solely to facilitate the reading of these terms and conditions. These headings therefore have no independent or substantive meaning.

ARTICLE 2 OFFERS

2.1

All our offers in whatever form made are, unless otherwise confirmed by us in writing, non-binding.

2.2

If the other party provides us with data, drawings, etc., we may assume their accuracy and will base our offer on them.

2.3

The colours, dimensions, weights and technical data, capacity, performance or results as well as the illustrations shown in our offers, guides, catalogues, stock lists, circulars, website and other advertising material etc. are only approximate and are not binding on us.

2.4

Agreements are only binding on us if and insofar as they have been confirmed by us in writing by the other party after receipt of the timely acceptance of our offer, unless we have already commenced performance of the agreement.

2.5

If the other party places an order verbally, a written order confirmation from us shall be deemed to accurately reflect the contents of what has been agreed, unless the other party immediately notifies us in writing of its objections to this representation of the contents.

2.6

In case of delivery from stock or warehouse within 8 working days after conclusion of the contract, the invoice shall replace our written order confirmation.

2.7

If it has been agreed to deliver in parts, each part shall, insofar as the contrary does not ensue from any provision, be regarded as a separate agreement, in particular with regard to payment, complaints and warranty.

2.8

The provisions of the preceding paragraphs also apply to the offers and promises made by our representatives or other persons in our service as well as the agreements made by them.

2.7

If the other party does not accept the offer, it is obliged to immediately return the data provided by us".

ARTICLE 3 PRICES

3.1

The offered, respectively agreed prices are exclusive of sales tax and are based on the taxes, levies, wages, social charges, material and raw material prices and other costs, as applicable on the date of the offer.

3.2

As long as the delivery of goods/performance of the work has not yet taken place, we reserve the right to pass on price-increasing factors to the other party, but only insofar as these increases exceed 0.5% with a minimum of € 25.00 of the stated price.

3.3

If goods are offered for sale by us against payment in a currency other than the Euro, we reserve the right, as long as delivery of the goods has not taken place, to pass on price-modifying currency changes to the other party.

ARTICLE 4 DELIVERY

4.1

We are entitled to deliver an order in its entirety or in parts after the successive availability of the goods.

4.2

If we deliver in parts, we are nevertheless entitled to demand payment per invoice relating to a partial delivery in accordance with the applicable payment conditions.

4.3

We cannot be obliged to make a delivery if the other party or its affiliated (legal) persons have not yet fulfilled any obligation from any legal relationship with us or at least the situation referred to in article 6.8 occurs.

4.4

We cannot be obliged to commence performance until all necessary data are in our possession and we have received the agreed (instalment) payment.

4.5

The delivery terms stated by us are free of obligation and only apply approximately unless a certain delivery term has been explicitly guaranteed by us in writing.

4.6

Transport to the place of delivery including loading and unloading is at the other party's expense and risk unless agreed otherwise in writing.

4.7

If the transport - whether or not for the other party's account - is realised by us, the other party guarantees that the means of transport can reach the unloading site properly and over a properly passable and accessible terrain, as well as that sufficient space is available for delivery.

4.8

If carriage paid delivery not unloaded has been agreed, one unloading hour will be allowed for each cargo immediately following the time of arrival. Additional unloading hours may be charged. Delivery must take place in such a way that unloading can take place during normal working hours. To achieve this, the parties shall consult with each other in good time.

4.9

Unloading by the other party shall take place with sufficient suitable personnel and material and on the instructions of us at least the carrier.

4.10

If unloading is done by the other party and we have provided tools to the other party for that purpose, the other party is responsible for the correct use of those tools from the moment that tools are brought onto the site.

4.11

If ex-works delivery has been agreed, the item shall be deemed delivered as soon as it is loaded into or onto the means of transport.

4.12

We are entitled but not obliged to insure the goods to be delivered at the expense and risk of the other party.

4.13

Without prejudice to the foregoing, for deliveries on call, the purchased goods shall as far as possible be distributed in equal quantities and instalments over the time set for taking delivery. If this does not take place, the other party shall be in default without notice of default. Uncollected goods are stored at the other party's expense and risk. We may always use our authority pursuant to Art. 6:90 of the Dutch Civil Code.

ARTICLE 5 FORCE MAJEURE

5.1

Force majeure means all circumstances not attributable to us, which must reasonably be considered to stand in the way of fulfilment or timely fulfilment of the agreement, including the case that - irrespective of the cause - we have not received the goods sold or have not received them on time, strike, transport difficulties, civil war, riots, danger of war, government measures, fire or other disturbances in our company. The delivery obligation shall be suspended and the delivery time shall be extended by a period of time equal to that of the continuation of the circumstances without us being liable for any compensation. All costs incurred by us until then shall be immediately due and payable in full.

5.2

In the event of force majeure, we shall notify the other party and we shall be entitled, at our discretion, to suspend or terminate the agreement in writing, without the other party being able to derive any right to compensation.

5.3

In case of suspension of the agreement by us due to temporary force majeure, the other party shall not be entitled to request dissolution of the agreement or to consider the agreement as dissolved, to suspend its performance nor to subsequently refuse performance by us or payment to us.

5.4

In case of termination of the agreement by us, the agreement will be dissolved by operation of law without the need for legal intervention. We are then entitled to a proportional part of the agreed price based on the deliveries already made and obligations entered into as well as the costs of termination. Payment thereof shall be made on our first demand.

ARTICLE 6 PAYMENT

6.1

Invoices shall always be paid without discount or set-off. Payment shall be made into one of our giro or bank accounts. Payment by any other means, in particular to our employees, is only valid after written confirmation by us.

6.2

In the case of delivery of materials from stock, payment shall be made upon delivery.

6.3

When materials are delivered to order, 60% of the sale price is to be paid at the time the order is placed. The balance, 40%, is to be paid on delivery.

6.4

In all cases other than those mentioned above, payment shall be made within thirty days of the invoice date,

6.5

Objections to our invoices must be notified to us in writing within fourteen days of the invoice date. Objections thus submitted do not suspend the payment obligation. The correctness of our invoices is established subject to proof to the contrary to be provided by the other party. If the correctness of the objections is established, we will proceed to settlement.

6.6

When payment has not been made within the agreed payment period:

- the other party shall owe us interest with effect from the due date. The interest rate shall be 12% per year but shall be equal to the statutory commercial interest rate pursuant to section 6:119a of the Dutch Civil Code if it is higher; in the calculation of interest, a part of the month shall be considered a full month; and
- the other party shall owe us the extrajudicial collection costs of 15% of the principal sum with a minimum of €500.00; and
- we shall be entitled to suspend fulfilment of all our obligations with the other party, or at least to dissolve them without judicial intervention, whether or not following suspension, without prejudice to other rights ensuing from the law. We are authorised to extend that suspension and/or dissolution also to other obligations arising from other legal relationships with the other party. The other party shall be liable for all damage we suffer as a result of the failure to perform. Our statement is established between the parties, subject to evidence to the contrary to be provided by the other party.
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6.7

Both before and after concluding the agreement, the other party is obliged to provide security at our first request, such as, without being exhaustive, advance payment, bank guarantee, pledge, mortgage, security deposits, if we have good reason to fear that the other party will not fulfil his/her payment obligations. The presence of good grounds is established, subject to evidence to the contrary to be provided by the other party. If the requested security is not provided (in time), the other party -without further notice of default- shall be in default.

6.8

If, based on information from the other party or on other reasonable grounds, we suspect that there is a circumstance that may adversely affect or prevent performance of the agreement, we shall be entitled to take all appropriate measures for the protection of our interests, or to demand an amendment to the agreement or to terminate the agreement, without the other party being entitled to any compensation as a result. The other party shall be liable for all damage suffered by us due to the failure in performance. Our statement is established between the parties, subject to evidence to the contrary to be provided by the other party.

Article 7 SUSPENSION, TERMINATION

Without prejudice to the provisions of the law and the other rights stated in these terms and conditions, we are entitled to dissolve the agreement with immediate effect by means of an extrajudicial declaration to the other party if the other party:

- is declared bankrupt;
- applies for suspension of payments;
- is dissolved;
- or otherwise loses power of disposal in any way over all or part of its assets or otherwise loses control over them;
- fails to comply with any obligation arising from this agreement and any other agreements entered into.

All claims that we may have or obtain against the other party in these cases shall be immediately due and payable in full. The other party shall then be liable for all damage we suffer. Our statement to that effect, subject to evidence to the contrary to be provided by the other party, is established between the parties

ARTICLE 8 RETENTION OF TITLE

8.1

The delivered goods are at the risk of the other party after delivery.

8.2

The goods delivered by us shall only become the property of the other party after he has complied with the payment obligations arising from this legal relationship and the obligations arising from other legal relationships with us. If and insofar as the other party has complied with the obligations in respect of the delivered goods, but has not (yet) complied with earlier or later obligations arising from the same or other legal relationships, our retention of title shall also extend to goods from those deliveries in respect of which the other party has complied with all its obligations.

8.3

As long as we are/we have become the owner, the other party undertakes to us to treat the delivered goods with care and not to pledge them, process them, transfer them or hand them over other than to deliver or process them in the normal course of business.

If the goods are sold and delivered to a third party, the other party shall be obliged to grant us a right of first pledge on the claim against its buyer on first demand. If the goods are mixed and/or improperly mixed and/or retraced, the other party shall be obliged to grant us at first request a right of first pledge on the created/formed seed(s) and/or the seed(s) into which the goods delivered by us under retention of title have been incorporated and/or (improperly) mixed.

8.4

After we have invoked our retention of title, the other party shall be obliged to give us the opportunity to recover the delivered goods and to provide us immediately with all necessary information to enable us to take possession of the goods. The other party allows us and hereby irrevocably authorises us to enter the place where these goods are located. Insofar as required, the other party shall at the first request always provide us with an irrevocable authorisation so that we can take possession of these goods, and the other party shall immediately do everything we request so that we can take possession of and retain these goods. All costs shall be for the other party's account. Our statement in this respect is established between the parties, subject to evidence to the contrary to be provided by the other party.

8.5

The other party shall be credited by us with a view to the repossession of said goods for the value that must be attributed to the goods exclusively at our discretion, reduced by the costs incurred on the repossession, without prejudice to our right to compensation of the damage resulting for us from all this. Our statement in this respect is established between the parties, subject to evidence to the contrary to be provided by the other party.

ARTICLE 9 WARRANTY

9.1

With due observance of the provisions of these conditions, we guarantee the soundness and quality of the goods delivered by us if, during a period of six months after delivery, any defect attributable to us arises, insofar as the provisions of article 10 have (also) been observed and only those goods are located in the Netherlands, we will repair or replace them free of charge, at our discretion. This obligation extends only to defects which were not reasonably noticeable at the time of delivery and which manifest themselves under normal operating conditions and with proper use of the goods. If and insofar as the quality has not otherwise been expressly agreed, minor deviations in size, colour, surface, structure and other detected minor defects shall not constitute a defect.

Unless there is a defect as mentioned above in this paragraph, the consequences of non-compliance with government regulations of a special nature shall not be considered a defect, unless the other party has informed us of these regulations in writing when entering into the contract.

If we have purchased the items ourselves from a manufacturer or third party, only the warranty conditions of that manufacturer or third party apply. Our warranty therefore only applies if the manufacturer or the third party from whom we obtained the items actually provides that warranty. We never give a wider warranty. The guarantee conditions will be handed over by us to the other party in advance or sent to the other party at the latter's request.

9.2

The other party is obliged on penalty of lapse of our guarantee obligation to notify us in writing of any detected defect immediately after its discovery. The other party is obliged to keep a defective part and, if we so require, to return the part in question to us freight-free. Goods or parts thereof which are replaced as a result of a repair order shall become our property.

9.3

Our guarantee obligation shall lapse if the other party or his/her staff or third parties have not handled the goods in accordance with the instructions, regulations or otherwise inexpertly or carelessly, if the other party has used the goods for other than normal business activities than those for which the goods are intended, or if the other party has had repairs or alterations carried out by parties other than us without our written permission.

9.4

The guarantee obligation does not exist or at least lapses if the other party fails to fulfil any obligation towards us, regardless of whether that relates to the present or any other legal relationship.

The other party shall not be entitled to refuse payment on the ground that we have not yet fulfilled or not fully fulfilled our warranty obligation.

9.5

In the event that we fail to fulfil our warranty obligation, subject to these terms and conditions, our liability shall be limited to the costs of repair or replacement by third parties, up to a maximum of the invoice amount relating to that item, but only after the other party has given us written notice of default and given us a reasonable period within which we can still fulfil our warranty obligation.

9.6

Any claim for compensation or repair lapses if the claim has not been made known to us in writing no later than the day the guarantee period expires.

ARTICLE 10 COMPLAINTS

10.1

The other party can no longer claim a defect - of whatever nature - if it has not submitted a written claim to us within seven days of the day of delivery of the goods by the other party, accompanied by the relevant packing list. An exception is made for goods delivered from stock, which must be claimed no later than the time of delivery.

10.2

Verbal claims and claims submitted after the expiry of the said period will not be accepted.

10.3

Complaints do not relieve the buyer from payment in accordance with the invoice.

ARTICLE 11 LIABILITY

11.1

Neither we nor our staff nor our auxiliary persons are liable for any damage, whether direct or indirect, including trading loss and/or stagnation damage and/or immaterial damage, which the other party may suffer as a result of defects in the goods delivered and/or services rendered due to the non-delivery, untimely delivery or defective or incorrect delivery of a good and/or service or due to any cause whatsoever. The other party shall be obliged to indemnify us against all third-party claims due to product liability as a result of a defect in a product delivered by the other party to a third party that (partly) consisted of goods delivered by us.

11.2

If and insofar as the other party proves that the damage is the result of our fault and/or our staff members and/or auxiliary persons engaged by us, we shall only be liable up to the amount paid out under our insurance policy in the case in question. At the other party's request, we shall provide the other party with a copy of our insurance policy. Upon written request and at the other party's expense, we are prepared to make every effort to take out third-party insurance.

11.3

We stipulate for the benefit of our personnel and/or auxiliary persons that they cannot be held directly liable by the other party.

11.4

The limitations included in previous paragraphs of this article do not apply if the other party proves that the damage is the result of intent or gross negligence on the part of Aquasystems.

11.5

The other party's claims for damages or repair against us must be reported to us in writing within two weeks after the event has occurred, under penalty of expiry. Any legal action for damages or repair shall be inadmissible if instituted after expiry of one year after delivery.

ARTICLE 12 DRAWINGS

12.1

Drawings, technical descriptions, designs and calculations form part of the agreement if and insofar as they are referred to in the agreement. If the drawing differs from the technical description, the latter shall prevail.

12.2

All drawings, images, catalogues, software and other data produced by us or at least commissioned by us or at least made available by us to the other party remain our property and must be returned to us immediately upon request.

12.3

The other party undertakes not to copy these data (or have them copied) or make them available for inspection or use to third parties, unless express prior written consent has been obtained from us.

ARTICLE 13 INDUSTRIAL PROPERTY RIGHTS

13.1

We assume that the goods delivered by us as such do not infringe any (Dutch) patent rights, model rights, trademark rights, copyrights or other industrial or intellectual property rights of third parties. If, nevertheless, third parties make such claims, the other party shall -on pain of forfeiting the performance to be specified- inform us immediately and fully thereof so that we can defend ourselves properly.

13.2

If it is established that any goods delivered by us infringe the rights of third parties as referred to above, we shall, at our discretion and after consultation with the other party, replace the good concerned with a good that does not infringe that right, or acquire a licence right in respect of that good, or take back the good concerned against payment of the price paid for it, less the depreciation deemed normal, without being liable to pay further compensation.

13.3

If drawings, models or other indications -in the broadest sense of the word- have been made available by the other party during the performance of the work/sale and are thereby applied to a trademark, patent

or similar rights of third parties are infringed, the other party is liable for the resulting damage. We shall be entitled to suspend sale and/or execution of the work as soon as a third party informs us that a right belonging to it has been infringed. We shall inform the other party of this immediately. The other party shall be liable for any damage resulting from this for us. The other party is obliged to indemnify us in this respect.

ARTICLE 14 BAIL

If and insofar as the other party is a legal entity, the person acting on behalf of the other party in the exercise of his profession or business shall stand as guarantor and joint and several debtor in addition to the other party. It is established between the parties that the person acting on behalf of the other party is acting in the exercise of his profession or business if he is (co-)shareholder and/or director and/or proxy holder and/or a de facto manager of the other party. The person, in addition to the other party, warrants that on our first request, he will sign a deed containing that surety agreement.

ARTICLE 15 EVIDENCE

The parties hereby agree that, with regard to the agreements made, our records shall serve as exclusive evidence without proof to the contrary being allowed except in those cases where in these general terms and conditions the other party is allowed to provide proof to the contrary.

ARTICLE 16 APPLICABLE LAW, COMPETENT COURT

16.1

All agreements concluded with us are governed exclusively by Dutch law.

16.2

Only the Utrecht District Court is competent to take cognisance in first instance of disputes arising between us and the other party, unless mandatory rules of jurisdiction designate another court.

AQUA  SYSTEMS
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AQUA 
Excellent