

**VAN NIFTERIK HOLLAND BV**  
**EDE**

---

**GENERAL TERMS AND CONDITIONS**

---

**I. General Provisions**

- 1.1. All contracts of sale concluded between a Buyer and Van Nifterik Holland, as well as the performance thereof, shall be subject to these Terms and Conditions. Van Nifterik Holland, hereinafter to be referred to as 'Van Nifterik', has its official seat and place of business at Ede.
- 1.2. Any other terms and conditions used or stipulated by the Buyer, irrespective of the name used to refer to these, shall not be applicable unless Van Nifterik has agreed to such terms and conditions or to one or more provisions thereof explicitly and in writing.
- 1.3. Any changes made to any agreement entered into by Van Nifterik and the Buyer and any stipulations that deviate wholly or partly from these Terms and Conditions shall be effective only if they are made in writing and by mutual consent.

**II. Definitions**

- 2.1. For the purposes of these Terms and Conditions the term 'packaging' shall be taken to mean large packaging materials that, by their nature, are intended to be able to transport products in large quantities, such as pallets and crates.
- 2.2. For the purposes of these Terms and Conditions the term 'collection costs' shall be taken to mean costs incurred out of court to engage a provider of legal assistance in order to collect payment.

**III. Offers and quotations**

- 3.1. All offers submitted by or on behalf of Van Nifterik, whether verbally or in writing, are subject to contract unless the quotation is submitted by Van Nifterik in writing and explicitly and includes a period for acceptance.
- 3.2. Contracts and orders that explicitly state a level of quality, type of product, quantity or weight shall not be binding on Van Nifterik unless they have been accepted by Van Nifterik. Van Nifterik shall not be liable if an order placed over the telephone is not carried out correctly.
- 3.3. All estimates made by Van Nifterik of costs involved (such as shipping costs and packaging costs) are subject to contract. The Buyers cannot derive any rights from such estimates.
- 3.4. An agreement between Van Nifterik and the Buyer shall only be concluded once the approval of the Buyer, containing no amendments to the contract, has reached Van Nifterik.
- 3.5. If an offer consists of various goods, Van Nifterik shall have no obligation to deliver part of the goods for a price per item corresponding to the price per item quoted for all parts of the offer together.
- 3.6. Pictures, illustrations and descriptions in prospectuses, catalogues, promotion materials and other information provided by Van Nifterik for commercial purposes are not binding on Van Nifterik, unless a guarantee has been given by Van Nifterik in writing.

#### **IV. Agreement**

- 4.1. Agreements between Van Nifterik and the Buyer are not binding on Van Nifterik unless Van Nifterik has given confirmation in writing or verbal confirmation. The burden of proof regarding verbal confirmation lies with the Buyer.
- 4.2. All agreements entered into with Van Nifterik are subject to the resolutive condition [*ontbindende voorwaarde*] that the Buyer is able to prove to Van Nifterik to be sufficiently creditworthy, the assessment of which shall be exclusively at Van Nifterik's discretion.
- 4.3. When entering into an agreement, Van Nifterik shall be entitled to stipulate a down payment of at least 25%. In the event of default of payment the agreement shall not take effect.
- 4.4. Any changes to the original order of any nature whatsoever made by or on behalf of the Buyer in writing or verbally that result in higher costs than the costs that could be estimated at the time the quotation was submitted will be charged to the Buyer. Any such changes may cause the delivery time agreed on by Van Nifterik to be exceeded without Van Nifterik being liable for such delay and without the validity or enforceability of the agreement being affected.

#### **V. Packaging**

- 5.1. Van Nifterik undertakes to provide adequate packaging for the items purchased from Van Nifterik by the Buyer (unless this is impossible owing to the nature of the items) and to secure the items in such a way that, when transported in a normal manner, they will arrive at their destination in good condition.
- 5.2. Any packaging materials referred to as such by Van Nifterik will remain Van Nifterik's property and must be returned, carriage paid, undamaged and in good condition upon receipt by the Buyer of the goods purchased.
- 5.3. The Buyer is liable for the transport of any empty packaging materials to be returned.

#### **VI. Quality, type, quantity and weight**

- 6.1. Quality, type, quantity and weight of the items purchased by the Buyer established at the time of shipment from Van Nifterik's site shall apply.
- 6.2. Minor deviations (less than 5%) in quality, type, colour, packaging, hardness, thickness etc. do not constitute grounds for rejection. Assessment of a delivery in order to determine whether the deviation exceeds the abovementioned limit requires an average sample of items from such delivery. Rejection cannot be based on a sample of a small number of items.

#### **VII. Prices**

- 7.1. All agreements shall be entered into on the basis of the rates and prices applicable at the time of their conclusion.
- 7.2. If the Buyer is sufficiently aware of the fact that the delivery or shipment from the country of production has yet to take place, and the delivery has not yet been completed by Van Nifterik without the delay in delivery being attributable to Van Nifterik in any way, increases in the purchase price may be passed on to the Buyer.
- 7.3. If, 4 months or longer after the date on which the agreement was entered into, Van Nifterik has not yet fulfilled its obligations under the agreement, without the delay in the performance being in any way attributable to Van Nifterik, increases in factors determining prices may be passed on to the Buyer.
- 7.4. Payment of price increases as referred to under 7.2 herein shall take place at the same time as payment of the principal sum or of the final instalment.

### **VIII. Delivery and terms of delivery**

- 8.1. The approximate delivery time will be determined by Van Nifterik.
- 8.2. When determining the delivery time, Van Nifterik shall proceed on the assumption that it is possible to perform the obligations under the agreement under the circumstances known to him at the the time of the conclusion of the contract.
- 8.3. The term of delivery period shall start on the date at which the Buyer has provided Van Nifterik with all the necessary information for the order to be carried out.
- 8.4. Exceeding any indicative delivery dates or delivery periods shall never result in the possibility to make a claim for compensation, unless a firm delivery date has been agreed on between Van Nifterik and the Buyer explicitly and in writing.

### **IX. Force Majeure**

- 9.1. Van Nifterik shall be entitled, without being in default, to suspend the delivery of goods purchased by the Buyer if as a direct or indirect result of one or more causes referred to in subclause 9.2 herein – regardless of whether or not these could have been foreseen at the time of the conclusion of the contract – the goods cannot be delivered on time or at all.
- 9.2. Force majeure on the part of Van Nifterik shall arise if, after having entered into an agreement, Van Nifterik is unable to perform its obligations under the agreement or to perform the preparations to meet its obligations, as a result of war, threat of war, civil war, riots, civil unrest, industrial action, sit-down strikes, picketing, lockouts, fire, environmental damages, water damage, flooding, government measures including measures related to import and export, extreme weather conditions, failure in the supply or availability of raw or ancillary materials, breakdown or failure in the supply of energy or materials required, failure by one of Van Nifterik's suppliers to perform its obligations, breakdown of or defects in machines, equipment or facilities used in production, defects in means of transport, blockades or transport restrictions, and any other circumstances for which Van Nifterik cannot be held liable.
- 9.3. If, owing to an event of force majeure as referred to in 9.2. above the delivery is delayed for more than sixty days, both Van Nifterik and the Buyer shall be entitled to unilaterally terminate the part of the contract that has not yet been performed, by means of a written notification to the other party. In that case, Van Nifterik shall only be entitled to payment of the costs reasonably incurred.

### **X. Retention of title [*eigendomsvoorbehoud*]**

- 10.1. Van Nifterik shall retain ownership of all goods it delivers to the Buyer – insofar as these items are identifiable – until such time as the Buyer has made all payments to Van Nifterik in consideration for the goods delivered. As long as Van Nifterik is the owner of the goods, Van Nifterik shall be entitled, in the event of failure by the Buyer to perform any or all of its obligations under the agreement, to reclaim possession of the goods delivered by Van Nifterik, whatever the condition and the location of the goods, at any time, and without any notice of default or judicial intervention being required.

### **XI. Complaints**

- 11.1. The Buyer shall thoroughly inspect any consignment immediately upon delivery to check the goods for defects, and shall immediately notify Van Nifterik of any defects in the goods in writing.

- 11.2. Any complaints regarding defects shall be submitted by the Buyer in writing within 8 days of delivery, specifying the nature of and the grounds for the complaint. Any claims for short delivery, external damage to goods delivered or deviations in the goods delivered from the particulars of the goods stated in the contract shall be noted. If the abovementioned term is exceeded, Van Nifterik shall not be held liable.
- 11.3. If a complaint regarding the quality or quantity agreed on has been submitted by the Buyer in time and if, according to Van Nifterik the complaint is justified, Van Nifterik shall undertake to remedy the defect or shortage in the shortest possible time. The Buyer shall give Van Nifterik the opportunity to remedy the defect or shortage and shall cooperate fully to enable Van Nifterik to perform its obligations under the contract.
- 11.4. If a complaint is submitted regarding an invoice received, the complaint shall be communicated to Van Nifterik in writing within 8 days of the invoice date. Any complaints received by Van Nifterik after the aforementioned term of 8 days has expired, will not be accepted by Van Nifterik. After the expiry of the 8-day term referred to above, the Buyer shall be deemed to have accepted the invoices as issued, barring proof to contrary provided by the Buyer.
- 11.5. Goods may not be returned by the Buyer without explicit prior written consent by Van Nifterik.
- 11.6. Complaints shall not entitle the Buyer to demand that the contract be set aside and shall not cause the payment obligations of the Buyer to be suspended – i.e. complaints do not entitle the Buyer not to pay or to postpone payment of the sum owed or part thereof – unless the competent court authorizes the Buyer to do so.

## **XII. Payment**

- 12.1. Unless Van Nifterik delivers to the Buyer for cash, payment for goods delivered shall be made in full without any deduction within 21 days of the invoice date, unless otherwise agreed on between the Buyer and Van Nifterik in writing.
- 12.2. Van Nifterik shall be entitled to charge the Buyer a maximum of 2% of the invoice amount in addition to the agreed purchase price, which may only be deducted by the Buyer as a prompt payment discount if the invoice amount is paid within 21 days of the invoice date.
- 12.3. The place of payment shall be the place where the banking institution with which Van Nifterik maintains a business relationship has its offices.
- 12.4. The Buyer shall not be entitled to set off debts from payments due.
- 12.5. If payment has not been made in by the Buyer within 21 days of the invoice date, the Buyer shall be liable to pay Van Nifterik interest of 1% on the outstanding amount, which shall be immediately due and payable, without notice of default being required. Interest shall be calculated starting from the date of expiry of the payment term to the date of payment to Van Nifterik of the outstanding amount, part of a month counting as a whole month.
- 12.6. If the Buyer is in default of payment or of any other obligations under the contract, the Buyer shall also be liable to pay any collection costs incurred by Van Nifterik for engaging a provider of legal assistance, with a minimum of € 50. These collections costs shall be calculated in accordance with the (debt collection) rates agreed on with the provider of legal assistance, based on the following table:
 

- on the first € 3,000	15%
- on the excess, up to €6,000	10%
- on the excess, up to €15,000	8%
- on the excess, up to €60,000	5%
- on the excess over €60,000	3%

If the actual costs incurred out of court are higher than the costs referred to in the table above, the Buyer shall be liable to pay the costs actually incurred.
- 12.7. If the Buyer files a petition for suspension of payments or an application to enter a government-approved debt repayment scheme, or if a petition for bankruptcy or liquidation has been filed against the Buyer, or if assets of the Buyer have been attached, or if any other legitimate doubts have arisen with regard to the Buyer's creditworthiness or if the Buyer in any way fails to meet its obligations, in particular its payment obligations or

its obligations to accept the goods delivered, or if more than one delivery term has expired without the Buyer having claimed the goods purchased, Van Nifterik shall be entitled, at any time, without prejudice to its right to demand performance of the Buyer's obligations, and without any notice of default being required:

- a. to transport the goods to another location and to store them at this location or to keep them stored at its own site, for the account and at the risk of the Buyer;
- b. to immediately suspend all further deliveries, irrespective of which contract the obligation to deliver goods may arise from;
- c. to unilaterally set aside all current contracts or parts thereof, by means of written notification to the Buyer, and to reclaim the goods;
- d. to demand payment from the Buyer of any interests, damages and costs.

12.8. If the Buyer is in default as referred to in 12.6 above, all debts owed to Van Nifterik by the Buyer shall become immediately due and payable.

### **XIII. Liability**

- 13.1. Van Nifterik disclaims any liability with regard to delivery of goods, unless the Buyer is able to prove an intentional act or omission on the part of Van Nifterik, and/or gross negligence attributable Van Nifterik. The damages payable by Van Nifterik shall be limited to an amount corresponding to the purchase price of the goods delivered or the amount involved in the order.
- 13.2. Van Nifterik disclaims any liability for direct or indirect damage incurred by the Buyer as a result of any defect in the goods delivered, unless the Buyer is able to prove that Van Nifterik was aware of the defect before the goods were delivered.
- 13.3. Van Nifterik shall not be liable to pay any compensation for consequential damage and loss of profits suffered by any Buyer.

### **XIV. Applicable law**

- 14.1. All contracts concluded by Van Nifterik and the Buyer shall be governed by Dutch law.
- 14.2. All disputes arising from or relating to the contract concluded by Van Nifterik and the Buyer, or any further agreement, including but not limited to the collection of a debt, shall be submitted to the jurisdiction of the Utrecht District Court [*Rechtbank Utrecht*], with the exception of disputes that may be heard by the Subdistrict Section [*Kantongerecht*].

Filed on 2 July 2007 at the Netherlands Chamber of Commerce under number 08078272. The interpretation of these conditions according to the Dutch version is binding.