



Promese
logistics⁺

Terms and Conditions

Company's

Consumers

Retail



**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF PROMESE
(PRODUCTS AND SERVICES) FOR COMPANIES**

1. GENERAL

- 1.1 The present General Terms and Conditions of Sale and Delivery ("Terms and Conditions") shall apply to all offers and agreements, deliveries and services to be provided of the private companies with limited liability that form part of the group of companies including and around Promese Holding B.V. ("Promese"), having its registered office in Eindhoven, as referred to in article 24b Volume 2 'Burgerlijk Wetboek' (The Netherlands Civil Code). The most recent version of said Terms and Conditions shall always apply.
- 1.2 The Terms and Conditions shall be sent to the Client for no consideration at the Client's first request to that effect. The Terms and Conditions can also be consulted at the url www.promese.eu.
- 1.3 In the present Terms and Conditions, the following shall be understood to be:
- a) Agreement: each and every agreement that comes into being between Promese and the Client, each change or supplement thereto, as well as all (legal) acts in preparation and/or execution of the Agreement
 - b) Client: each and every natural person or legal entity who or that requests Promese to provide a service or to deliver goods;
 - c) Products: all the goods delivered or goods to be delivered by Promese, not being products that are made available to Promese by the Client within the framework of the provision of Services agreed upon ("Goods");
 - d) Services: all activities (in any form or shape whatsoever and no matter what they be called) that Promese carries out for or for the benefit of the Client, in connection with the production of Products or not;
 - e) Terms and Conditions: the most recent version of the present general terms and conditions of sale and delivery for companies as filed at the office of the Chamber of Commerce under file number 20083867. The present Terms and Conditions shall be sent to the Client for no consideration at the Client's first request to that effect.
- 1.4 Unless explicitly otherwise agreed upon, the present Terms and Conditions shall apply to all offers, orders, order confirmations, arrangements, services and all agreements of any kind whatsoever resulting therefrom.
- 1.5 The Client shall accept the applicability of the present Terms and Conditions by the mere fact that a request for information is put in and/or Promese is requested to submit an offer. General uniform or specific general terms and conditions (of purchase) of a (potential) Client of Promese, shall be explicitly rejected by Promese in all cases, including in the event the other party refers to the latter general terms and conditions in a request to Promese to submit an offer.
- 1.6 Promese shall see to it that all the quotes, brochures, order confirmations, invoices and other information submitted in any form or shape whatsoever, be as accurate as possible. The information shall not be binding. Promese can also not be held liable for any typing error or printing error or any similar error in the aforementioned material.
- 1.7 If any stipulation of the present Terms and Conditions is wholly or partially null and void or is nullified for any reason whatsoever, the other stipulations of the present Terms and Conditions shall remain in full effect. The case ensuing, Promese and the Client shall consult each other in order to agree on stipulations that replace the null and void stipulations and/or the nullified stipulations, whereby the purpose and the tenor of the null and void stipulation and/or the nullified stipulation, shall be observed to the maximum possible

2. OFFER AND ACCEPTANCE

- 2.1 All offers made, quotes given and conditions imposed by Promese, shall be without any obligation, unless explicitly stated otherwise.
- 2.2 The Client can accept an offer during a term of thirty (30) days from the date of the offer, subject to another explicitly stated term of acceptance.

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- 2.3 An offer or proposal shall state the result of the Services.
- 2.4 An Agreement shall only come into being after acceptance of the offer by the Client and a written confirmation thereof by Promese.
- 2.5 (Supplementary) arrangements or promises potentially made and changes potentially introduced shall only bind Promese if the authorised representative of Promese has confirmed them explicitly in writing.
- 2.6 The Client can only cancel and annul the Agreement if Promese consents to it in writing. The Client shall then be under the obligation to compensate the costs incurred by Promese in preparation – and partial – execution, as well as to compensate the adverse financial effects for Promese due to the non-execution of the Agreement. Said compensations shall jointly amount to minimum 10% of the contract value agreed upon.
- 2.7 If the change to the Agreement or the agreement resulting therefrom lead to an increase of the costs, said costs shall be stated separately on the invoice to be sent to the Client.
- 2.8 In the event of on-call agreements and/or framework agreements, the Agreement shall each time come into being the moment Promese receives the order for (partial) delivery within the framework of the on-call agreement or framework agreement and Promese confirms it in writing.
- 2.9 If drawings, models, specifications, instructions, inspection instructions and the like, are made available by the Client and/or Promese during the execution of the Agreement, they shall form part of the Agreement.

3. SERVICES

- 3.1 Promese shall guarantee that:
 - a) it disposes of the licences and/or certificates required for the provision of the Services, to the extent such apply;
 - b) the Services to be provided by or on behalf of Promese shall be provided in an expeditious, skilled and professional manner that may be expected of Promese and that the results shall be in conformity with the specifications and/or descriptions agreed upon;
 - c) the Services shall be provided having due regard to all the current legislation and rules and regulations, subject to the fact and to the extent non-compliance is to be blamed on the Client.
- 3.2 The Services that shall be provided, shall contain the services and/or deliveries listed in the Agreement.
- 3.3 If the Client wishes to purchase Services from Promese that are not listed in the Agreement, a new offer can be submitted for said Services.
- 3.4 Promese may provide incidental Services at the request of the Client, which shall afterwards be charged to the Client on the basis of the current rates or on the basis of an accepted offer or another written arrangement. Exceeding existing arrangements shall be considered to be incidental services.
- 3.5 The Services shall be provided at the location and the time agreed upon.
- 3.6 Promese shall see to it that only equipment, machines and/or components that are suited for the purpose to be realised, shall be used for the provision of the Services.

4. DELIVERY (PERIOD)

- 4.1 Delivery period shall be understood to be the terms stipulated in the Agreement within which the Services have to be provided and/or the Products have to be delivered.
- 4.2 Delivery periods shall only be given approximately and shall only be indicative. The consequences of hindrance, non-reaction or non-appearance, shall be for the risk and account of the Client.
- 4.3 Exceeding the delivery period, including but not exclusively, exceeding the term due to complications during the transport of the Products or Goods, shall not entitle the Client to damages, including but not exclusively, consequential damage, nor to non-compliance with any obligation resulting from the present Agreement or another agreement linked to it, nor to the dissolution of the Agreement.

- 4.4 In the event of imminent exceeding of the delivery period agreed upon or the inability to provide the Services in due time, Promese shall quickly notify the Client thereof. The Contractor shall state in this respect the nature of the imminent exceeding of the delivery period, the measures he has taken and the anticipated duration of the delay. .
- 4.5 The Products shall be delivered "Ex Works" as worded in the latest version of the ICC Incoterms 2000, unless explicitly agreed upon otherwise.
- 4.6 Completion shall be deemed to have taken place the moment the Products are made available to the Client's customer by Promese. When the customer refuses to take delivery of the Products, they shall be stored for the risk and account of the Client, if the storage capacity of Promese allows for it. Products shall be stored for a period of maximum six (6) months. Upon expiry of said term, Promese shall be entitled to destroy the Products or to re-use them in a manner to be determined by Promese.
- 4.7 All deliveries shall be made in accordance with the customs and habits going with agreements regarding the delivery of optical media, meaning that maximum 5% more, or less, of the ordered quantity may be delivered with a maximum of 1,000, whereby the quantity actually delivery shall be charged.
- 4.8 In the event Products are delivered, Promese can deliver at its own discretion the batch of the order that is already ready or wait until the entire order is ready.
- 4.9 In the event of delivery of orders that relate to Products, in batches in accordance with the above, as well as in the event of deliveries of successive batches of an order by virtue of the Agreement, each delivery (completion) shall be deemed to constitute a separate agreement on which the Client can no longer go back in the event of acceptance of the goods delivered.
- 4.10 Unless otherwise agreed upon, the Client or the Client's customer shall be under the obligation to immediately take delivery of the order executed and after completion thereof.

5. PRICE

- 5.1 All quotes and offers shall at all times be free of obligation, unless explicitly agreed upon and/or stated otherwise.
- 5.2 All prices offered by Promese shall be net prices in cash without discount and/or other levies, duties, excises, costs and surcharges owed at the time the Service concerned is provided or the Product concerned is delivered.
- 5.3 Any potential subsequent or supplementary tax, tax levy, duty, excise or other increase of any kind whatsoever and no matter how it may be called, or a potential increase of the above, or a potential price increase or a potential increase of the supplementary costs borne by Promese that materialise after the agreement has come into being, shall be charged on to the Client as yet, provided Promese send the Client a notification of this tenor.
- 5.4 If Promese is not able to provide the Services in circumstances that are normal for Promese and during office hours, the prices shall be increased by the corresponding potential extra costs. Said increase shall first be communicated and agreed upon.
- 5.5 All extra costs Promese incurs in connection with the Services and costs that are not listed in overviews of rates, offers, proposals, etc., shall be compensated by the Client.
- 5.6 The costs of third parties called in in consultation with and following approval of the Client, shall be for the Client's account and if Promese charges them on to the Client, they shall be increased by the corresponding additional costs for Promese in this respect.
- 5.7 If three (3) months have expired since the conclusion of the Agreement, Promese shall be entitled to adjust the price to changes to cost-deciding factors not being the increases as referred to in article 5.3, such as the costs of raw materials, wages and the exchange rate, that have possibly come into being during the period of time in between the conclusion of the Agreement and the delivery and/or payment.
- 5.8 All prices and/or rates shall be in Euro and exclusive of VAT, copyrights potentially owed and taxes, levies, duties and charges imposed by government and/or semi-government bodies, unless explicitly otherwise agreed upon in writing.

- 5.9 Unless explicitly otherwise agreed upon in writing, the costs relating to the installation and/or implementation of the Products delivered by Promese, shall exclusively be for the Client's account.

6. INVOICING AND PAYMENT

- 6.1 Within five (5) working days after the end of the calendar month, Promese shall send the Client an invoice for the Services that were provided and/or the Products that were delivered by Promese in the previous month, unless otherwise agreed upon.
- 6.2 The Client shall pay the invoice within thirty (30) days from the date of invoice into a bank account stated by Promese, in the absence of which the Client shall be in default without any notice of default and shall owe the statutory commercial interest increased by 1.5% for each day or part thereof that payment remains forthcoming, commencing on the expiry date of the invoice up to and including the day of payment in full.
- 6.3 In addition to the principal and the interest for overdue payment, the Client shall owe all the costs, both judicial and extrajudicial costs, Promese incurs to collect its claim as well as to safeguard its rights. Judicial costs shall in any case be understood to include the statements of expenses of lawyers, experts and all those Promese has instructed to assist with the collection and/or whom Promese has instructed to conduct proceedings in this respect, even though the statements of expenses concerned are potentially higher than the amount the Court in the proceedings has budgeted due to costs at the expense of the party ruled against. Extrajudicial costs shall in any case be understood to include the statements of expenses and bills of expert (legal) advisors, debt-collection agencies, bailiffs and all those Promese has instructed to assist with the collection out of court.
- 6.4 Promese shall have the right to only deliver, at its own discretion, on condition of payment in advance or on conditions that deviate from those set out in the present article 6.
- 6.5 The Client shall never be entitled to suspend the payment of any invoice or to set it off against any claim on Promese. Promese shall be entitled to set off its debts to the Client (including the debts of the "Stichting Derdengelden Promese Logistics" [Promese Logistics Third-Party Account Foundation]) against the claims of the companies forming part of the group of companies of which Promese is a part.
- 6.6 If the Client is in default, applies for suspension of payments, is bankrupt, ceases his business (activities) or if Promese has any serious doubt that the Client shall be able to comply with his obligations in a proper and timely manner, the claims Promese has on the client shall be immediately due and payable.
- 6.7 Promese shall at all times be entitled to demand security for compliance by the Client with the latter's (financial) obligations vis à vis Promese, if Promese has good grounds to fear that the Client shall not comply with his obligations to pay or shall not comply with them in a timely manner. If the Client fails to furnish security, Promese shall have the right to stop the (further) execution of the Agreement(s) until the demanded security has been furnished.
- 6.8 Payment by the Client at an earlier point in time, shall primarily serve to pay the interest owed by the Client and the collection costs incurred by Promese and subsequently to pay the longest outstanding claims, even if the other party states that the payment relates to an invoice of a later date.
- 6.9 Promese shall be entitled to have a company forming part of the Promese group of companies other than the company with which the Client entered into the Agreement, make out the invoices. Payment of the invoice thus received by the Client, shall not relieve the Client of his obligations by virtue of the invoice also vis à vis the company with which the Client entered into the Agreement.

7. PACKAGING

- 7.1 Promese shall be entitled to calculate the packaging at cost price.
- 7.2 The Client shall be under the obligation to return all packaging empty and in an undamaged condition within thirty (30) days after delivery for his own risk and account, in the absence of which Promese shall be entitled to charge the purchase costs of new packaging to the Client, increased by a fixed surcharge of 20% for all other direct and

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indirect costs, without prejudice to Promese's right to charge the costs actually incurred, to the Client.

- 7.3 The Client shall not change the labelling of the packaging, nor shall he provide it with other labels or print, subject to mandatory rules of law in the country where the Client is established. In the event of such statutory obligations, the Client shall comply with them and forthwith inform Promese thereof.
- 7.4 The obligations set out in the present article, shall apply accordingly to the Client's customers. The Client shall guarantee compliance by said customers with the present obligations vis à vis Promese.

8. COMPLAINTS AND GUARANTEES

- 8.1 Promese shall guarantee the good quality of the Products delivered by Promese and shall guarantee that the Products can be used for the purpose for which they have been manufactured. The components used shall meet the standards imposed on them and shall be in accordance with the specifications potentially given and/or with the known specifications.
- 8.2 Promese shall account for the Services whose result can normally be guaranteed due to their nature. The Services whose result can normally not be guaranteed due to their nature, shall be provided to the best of Promese's knowledge and ability and in accordance with the requirements of proper workmanship, but Promese cannot give any guarantee in respect of the results of the Services provided.
- 8.3 Should the Products show any unacceptable deviations, damage, shortcomings and/or or other defects, Promese shall be prepared to repair and/or compensate them on the terms and conditions set out in the present article.
- 8.4 Considering the stipulations of article 8.3, the Client shall be under the obligation to check the Products delivered and the Services provided, within 24 hours after delivery for potential shortcomings and report them forthwith, but not later than within 48 hours after delivery, to Promese in writing and by registered mail, in the absence of which Promese shall be deemed to have fully complied with its obligations in respect of the Products and the Services and all of the Client's rights in that respect shall lapse.
- 8.5 If and to the extent there is a matter of a complaint filed in due time, whereby the proof of timely filing as well as the correctness of the complaint shall be on the Client, which has been accepted and found justified by Promese, the Client shall have to return the Products to Promese within eight (8) days from the day the complaint is accepted, whereby the Products shall have to be accompanied by a return advice stating the date and number of the delivery invoice and the reason for the return shipment. Promese shall subsequently be held to replace the initial Products by Products of the quality agreed upon, or to repair the Products, all this at the discretion of Promese. Each and every other or more far-reaching liability on the part of Promese, shall be excluded.
- 8.6 If complaints prove to be unfounded, the examination costs may be charged to the Client, who shall be held to take back the Products he complained about for his own risk and account.
- 8.7 Complaints about invoices or the scope of a delivery, shall have to be filed in writing with Promese within fourteen (14) days from the date of invoice accurately stating the nature of and the grounds for the complaint(s).
- 8.8 Complaints about shortcomings in and damage to a shipment received by or on behalf of the Client, shall have to be mentioned on the consignment note, in the absence of which any complaint in this respect shall lapse.
- 8.9 In the event a complaint is filed, the Client shall not be entitled to suspend compliance with his obligations vis à vis Promese.

9. LIABILITY / DAMAGES

- 9.1 Promese shall not be liable for any damage, both direct and indirect, including but not limited to, trading loss, consequential damage, damage to movable and immovable goods (of third parties) or people by any cause whatsoever on the part of the Client or the third party in connection with the Products delivered or the Services provided by

- Promese, unless the damage has arisen as a consequence of intent or gross negligence on the part of Promese.
- 9.2 Promese shall not be liable for the contents of data that are or shall be affixed to Products with the intervention of Promese or not (image, sound or data).
 - 9.3 Promese shall not accept any liability for damage being the consequence of the failure on the part of the Client to provide the information and/or materials required to provide the Services, or the overdue or improper provision of said information and/or materials by the Client.
 - 9.4 Promese shall not accept any liability for damage being the consequence of Goods delivered to Promese.
 - 9.5 In the event Promese is held liable despite the stipulations of the present article, to compensate any damage, the liability for the compensation shall be limited to the net value of the invoice concerning the individual transaction or the maximum payment to be made by the insurer of Promese if the net value of the invoice exceeds the amount to be paid by the insurer.
 - 9.6 Promese shall not accept any liability for faulty (components of) products it uses for the provision of the Services.
 - 9.7 If the ratio of the performances to be delivered by Promese compared to the scope of the damage sustained by the Client gives rise to do so, the damage to be compensated by Promese shall be moderated.
 - 9.8 The Client shall indemnify Promese against any claim lodged by any third party in respect of damage that is the consequence of the Products delivered and/or the Services provided by Promese.

10. INTELLECTUAL AND INDUSTRIAL PROPERTY

- 10.1 All industrial and intellectual property rights to (parts of) the Services provided by Promese and to goods that are the property of Promese (including possible documentation going with them), shall be vested in Promese. Unless otherwise explicitly agreed upon, Promese shall not grant the Client a right of use and/or a licence in respect of the intellectual and industrial property rights the title to which is vested in Promese or that are vested in Promese by virtue of a licence.
- 10.2 Without prior consent to that effect in writing of Promese, the Client shall not be allowed to make any changes to the Promese products or the packaging thereof and/or to affix his own trademark(s) or trade name(s) or to introduce any other changes on or in them or to otherwise infringe or prejudice the intellectual and industrial property of Promese.
- 10.3 The Client shall guarantee Promese that he holds all the rights – including industrial and intellectual property rights – to the materials delivered and/or made available to Promese by the Client, that are required to comply with the obligations of Promese by virtue of the Agreement and/or that the Client has the right to allow Promese to make use of said materials and to use them as set out in the Agreement.
- 10.4 Promese shall not accept any liability vis à vis the Client for any infringement as referred to in the present article if the infringement relates to the fact that Promese has adjusted or changed the products concerned or has instructed third parties to do so, on the instructions of the Client.
- 10.5 The Client shall indemnify Promese against any liability, loss, damage, claim, costs or expenses (including but not limited to costs of legal assistance) that result directly or indirectly from or are connected with the publication, processing, use, distribution, contents or exposition of materials delivered to Promese by the Client or the latter's representatives, including but not limited to, any liability for defamation, insult, violation of privacy, infringement of a patent, copyrights, trademark rights or any other industrial and intellectual property rights, or fraudulent acts in respect of business secrets.
- 10.6 The Client shall guarantee that the products and materials supplied to Promese for the provision of the Services do not infringe any industrial and intellectual property rights of any third party. If an action is instituted on the ground of an infringement of any such rights or if that possibility exists, the Client shall have to replace or modify the products concerned, or acquire the right to continue to use them or to take them back wholly or partially. The Client shall forthwith notify Promese in writing of any event in which

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- Promese would be held liable or of any legal measure based on the argument that the use of said Products is an infringement of intellectual or industrial property rights.
- 10.7 Promese shall retain all the rights to all computer programmes, specifications and/or data Promese uses or has developed for the execution of the Agreement regardless whether said computer programmes, specifications or data have been developed by Promese for the provision of Services and/or the delivery of Products to the Client by virtue of the Agreement or otherwise.
- 10.8 Promese shall retain all rights to treatments, including but not limited to, all model and trial treatments produced by Promese, regardless whether they have been produced for the provision of the Services and/or the delivery of the Products to the Client by virtue of the Agreement or otherwise.
- 10.9 The Client shall declare that he enjoys all the duplication rights, including the right to mechanical duplication and the right to use certain film and sound data and other software recordings, etc., and he shall also guarantee that all the costs pertaining to copyrights and other amounts owed, have been paid in full either to the owner concerned or to the authorised bodies that represent the owners and he shall furthermore guarantee that no claims shall be lodged against Promese in this respect. The Client shall indemnify Promese in every aspect, in particular against claims lodged by third parties, including claims of copyright organisations or other organisations as well as against costs resulting from legal proceedings regarding alleged or actual infringements of the aforementioned rights. The Client shall declare he is prepared to give the statements required to that effect for no consideration at Promese's first request to that effect or to supply them for no consideration at Promese's first request to that effect. The aforementioned indemnification shall include production costs potentially incurred by Promese. The Client shall agree that Promese, at the request of the parties concerned, give information about individual orders to organisations in the field of the exercise of copyrights and to other organisations that occupy themselves with the protection of intellectual and industrial property rights, which said information said organisations need in order to guarantee a proper licence arrangement and/or the administration of the protection of any intellectual or industrial property right.

11. PLEDGE AND RETENTION OF TITLE

- 11.1 All The Goods Promese keeps in custody for the Client, shall be deemed to have been pledged to Promese with respect to all the current and future amounts the Client owes or shall owe Promese by any virtue whatsoever in accordance with the administration of Promese.
- 11.2 All Products delivered by Promese, not being Goods the Client has delivered to Promese within the framework of the provision of the Services, shall remain the property of Promese up to the moment the Client has paid all the claims of Promese regarding the consideration for the products delivered or to be delivered or the Services provided or to be Provided or activities carried out or to be carried out by Promese to or for the Client by virtue of the Agreement as well as by virtue of all other agreements concluded and still to be concluded with the Client, as well as the claims regarding the failure to perform such agreements. Notwithstanding the retention of title, the Client shall be allowed to sell the Products within the framework of his normal business activities. However, normal business activities shall not be understood to be closing-down sales, sales at dumping prices and the like.
- 11.3 If and the moment the Client is in default with the compliance with one or more of his obligations or acts in violation of the stipulations of the present article, Promese shall be entitled to recover the Products delivered as referred to in the present article, as the property of Promese without judicial intervention and the Client shall have to lend his co-operation to said recovery. All the costs of recovering the goods encumbered by a retention of title, shall be for the account of the Client. If the Client refuses to lend his co-operation to said recovery of the Products despite a warning to do so, the Client shall be in default in this respect and shall forfeit an immediately due and payable penalty of € 500.00 for each day he is / continues to be in default in this respect.

- 11.4 When the Client has complied with all of his obligations by virtue of the claims referred to hereinbefore under section 2, Promese shall grant the Client the title to the products on reservation of the pledge in favour of Promese by way of further security for all the current and future claims by any virtue whatsoever, which Promese has and/or shall acquire on the Client. To the extent such be required, the Client shall lend his co-operation to all actions required within this framework, at Promese's first request to that effect.
- 11.5 The Client shall be under the obligation to properly insure the Products, against risks of theft, damaging and loss at any rate. A pledge in favour of Promese shall herewith be stipulated with respect to the payment of damages and loss of the Products referred to in the present article, which said payment shall take the place of the Products concerned.

12. FORCE MAJEURE

- 12.1 Each and every obligation on the part of Promese to perform the Agreement, shall be suspended for the duration of the period during which it is impossible to perform the Agreement or to perform it properly, due to circumstances of force majeure.
- 12.2 In this respect, force majeure shall be understood to be: each and every unforeseen and/or foreseeable circumstance or not beyond the will of Promese, due to which the Client can no longer demand in reason that Promese still perform the Agreement.
- 12.3 Force majeure shall in any case be concerned, but not exclusively, in the event of fire, flooding, industrial action, epidemics, (civil) war, riots, floods, water damage, terrorism, government measures, the unavailability (non-timely availability) of permits, trade embargos, labour unrest, power cuts, interruptions of operations, transport difficulties, unforeseen technical complications, breach of contract by or delays on the part of the suppliers and subcontractors of Promese and unavailability or overdue or insufficient availability of materials, transport, fuel, energy and labour force.
- 12.4 If the performance of the Agreement has been suspended for three (3) months or the moment it becomes a certainty that it will last three (3) months, either party can claim by registered mail that the Agreement either be adjusted to the circumstances, or be dissolved taking effect immediately for the part concerned, without the parties being held to reciprocally pay damages.
- 12.5 If the moment the force majeure took effect Promese had already complied with part of its obligations agreed upon, Promese shall be entitled to invoice the activities already carried out, separately and prematurely and the Client shall have to pay said invoice as if a separate transaction were concerned.

13. END OF THE AGREEMENT

- 13.1 Promese shall have the right to either terminate each Agreement and to claim the goods delivered back as its property, or to claim any amount the Client owes Promese in its entirety or to claim damages from the Client, by the mere fact that one of the circumstances listed hereinafter arises and without the need for any judicial intervention or notice of default, if:
- a) the Client fails to comply with any of his obligations vis à vis Promese or fails to comply with it in a timely or proper manner and has not remedied the shortcoming within fourteen (14) days from the moment Promese has sent the Client a written notice of default, or;
 - b) the Client is declared bankrupt or a request to that effect has been filed, suspension of payments has been filed for or granted, application of the debt rescheduling arrangement has been filed for or granted, or;
 - c) a prejudgement attachment and/or execution is levied at the expense of the Client, or;
 - d) force majeure as referred to in article 12 lasts longer than three (3) months, or;
 - e) the financial position of the Client entails risks in the opinion of Promese, unless the Client furnishes sufficient security upon the first warning of Promese and to the satisfaction of Promese, or;

- f) the Client is dissolved or wound up and a merger or a demerger (split-off) takes place, or,
 - g) the data provided to Promese by the Client prove to be inconsistent with the actual situation.
- 13.2 In the event the Client does not take action on which the progress of the Agreement depends during the execution of the Agreement for a period of two (2) months, Promese can consider the Agreement to be terminated. In the latter case, Promese shall retain the right to invoice the part of the Services already provided and/or the part of the Products already delivered to the Client. If Promese finds that the Client does not take action, Promese shall inform the Client in writing of its intent to consider the Agreement to be terminated whereby it shall offer a reasonable term, which shall serve as a term to be observed on penalty of forfeiture of rights, to take action as yet.

14. AUXILIARY MEANS

- 14.1 Designs delivered to order, can be charged separately to the Client, unless otherwise explicitly agreed upon in writing. Stamps, plates, moulds, tapes, negatives, printing plates and all other auxiliary means shall remain the property of Promese, unless they were made available by the Client.

15. QUALITY /COMPONENTS

- 15.1 To the extent Promese needs materials of the Client to provide the Services and/or to deliver the Products, the Client shall have to supply materials to Promese that are strictly consistent with the specifications submitted by Promese. If the materials are not consistent with the specifications of Promese, Promese shall be entitled to complete, improve or return said materials, all this at its own discretion, for the risk and account of the Client.
- 15.2 Printing materials supplied by the Client shall have to meet the specifications of Promese. Promese shall not be liable for the loss of printing material, image carriers, sound carriers and other data carriers during the manufacturing process, and this up to a percentage of 5%.
- 15.3 The Client shall guarantee that Promese will receive a master copy and the films as well as the digital files to print printing materials. The liability of Promese for the loss of or damage to the aforementioned materials, shall be limited to a maximum amount of € 1,000.-- regardless whether or not the Client has informed Promese of the value of the materials.
- 15.4 If the image carriers, sound carriers or other data carriers supplied by the Client do not meet the specifications of Promese and if Promese then nevertheless executes what has been agreed upon at the Client's request, Promese shall never be liable for the result and shall never be liable for any damage that arises or might arise at the Client's or at third parties' due to a lesser quality of the Product.
- 15.5 All the masters, digital files and label films supplied by the Client and/or produced by Promese, shall be kept for one (1) year and subsequently be destroyed. Upon the Client's request to that effect in writing not later than one (1) month prior to expiry of the aforementioned term, said term can be once extended by a term agreed upon between parties, whereby the storage costs shall be for the account of the Client.

16. APPLICABLE LAW / COMPETENT COURT

- 16.1 Dutch law exclusively, shall apply to the Agreement between Promese and the Client and all the agreements resulting therefrom, with the exclusion of the applicability of the Vienna Sales Convention 1980 (CISG) shall be explicitly excluded.
- 16.2 All disputes relating to or in connection with an Agreement, shall in the first instance have to be settled by the competent Court in the District of 's Hertogenbosch. However, Promese shall reserve the right to summon the Client to appear before another designated Court if Promese is of the opinion that the Client is held to indemnify Promese.
- 16.1 Contrary to article 16.2, the rule shall apply that if the Client has his place of residence, his place of business at any rate, outside the member states of the Convention on the

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Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters or the Convention of Lugano (Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters of September 16th, 1988), disputes that may arise further to the present Agreement and all the agreements resulting therefrom, shall be ruled upon in accordance with the Arbitration Regulations of the "Nederlands Arbitrage Instituut" (Netherlands Arbitration Institute). In principle, the arbitration tribunal shall consist of one arbitrator; If a financial interest in excess of EUR 100,000.- (one hundred thousand Euro) is concerned, the arbitration tribunal shall consist of three arbitrators. The location of arbitration shall be Rotterdam. The proceedings shall be conducted in Dutch.

17. MISCELLANEOUS

- 17.1 The Client shall not be entitled to assign or delegate his rights or obligations by virtue of the Agreement without prior consent in writing to that effect of Promese. Promese shall not refuse its consent on unreasonable grounds.
- 17.2 If Promese has concluded one Agreement with two or more (legal) persons, each of said (legal) persons shall be jointly and severally liable for the full performance of the obligation that results for them from said Agreement. The conclusion of one Agreement with two or more (legal) persons shall equally be concerned when Promese is requested to forward deliveries and/or invoices to affiliated companies. The latter shall then also be deemed to have bound themselves jointly and severally. Upon the first request to that effect, said (legal) persons shall sign a statement in which they confirm that they have bound themselves jointly and severally for the fulfilment of the obligations by virtue of the Agreement.
- 17.3 The text of the Dutch version of the present Terms and Conditions shall be decisive in the event of any lack of clarity in the translated version.
- 17.4 Information provided and advice given by Promese, shall be of a general nature and without any obligation. The Client himself shall be responsible for the implementation of the advice given by Promese.

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF PROMESE LOGISTICS B.V. FOR CONSUMERS

1. DEFINITIONS

- 1.1 In the present general terms and conditions of sale and delivery, the following shall be understood to be:
- a. Agreement: each and every agreement that comes into being between Logistics and the Consumer, each and every change or supplement thereto, as well as all the (legal) acts in preparation and/or in execution of said agreement
 - b. Consumer: the buyer of goods or the purchaser of services being a natural person, who does not act in the course of a profession or a business;
 - c. Defect(s): each and every deviation from the Specifications of the Products and/or the Services and any other case of improperly functioning of the Products or any other Service not properly provided;
 - d. Delivery Period: the term stipulated in the Agreement within which the Products have to be delivered and/or the Services have to be provided;
 - e. Distance selling: a system organised by Logistics for the sale or the provision of services from a distance; this shall be understood to be, among other things, telephone and internet, whereby exclusively one or more techniques for remote communication technique, shall be used up to the moment the Agreement is concluded;
 - f. Logistics: the private company with limited liability Promese Logistics B.V., having its registered office in Eindhoven, listed in the Trade Register under file number 17062755, as well as its legal successors under general or singular title;
 - g. Order: each and every order of Products and/or Services placed by a Consumer using any means of communication whatsoever, as well as each and every purchase of Products and/or Services via Direct Sales shall be considered to be an Order to buy the Products and/or Services under the application of the Terms and Conditions.
 - h. Product(s): good and/or goods the Consumer undertakes to buy vis à vis Logistics;
 - i. Remote Communication Technique: a means that can be used to conclude an agreement from a distance without the need for the simultaneous personal presence of parties.
 - j. Service(s): all the activities Logistics carries out for or on behalf of the Consumer in connection with the delivery (completion) of the Products;
 - k. Specifications: the description of the Products or Services drawn up and/or explicitly approved by Logistics, which are mentioned or referred to in the Order or the Agreement. In the absence of said Specifications, all that is agreed upon between parties, or in the absence of the latter, all that is common practice in the industry, shall apply as description;
 - l. Terms and Conditions: the most recent version of the present general terms and conditions of sale and delivery for consumers, as filed at the office of the Trade Register under number 17062755. Said Terms and Conditions shall be sent to the Consumer for no consideration at the latter's first request to that effect;
 - m. Visual Inspection Term: the term within which the Consumer can exercise his right of withdrawal

2. APPLICABILITY AND ANNULLABILITY

- 2.1 Regardless the means of communication that will be used, the present Terms and Conditions shall apply to each and every offer, agreement and/or sale of Products to which Logistics has declared the present Terms and Conditions applicable, all this to the extent parties have not explicitly deviated from the present Terms and Conditions in writing.
- 2.2 The present Terms and Conditions shall equally apply to agreements with the Consumer for whose performance the services of third parties have to be called in.
- 2.3 The "*General Terms and Conditions of Sale and Delivery of Promese*" shall apply to all (legal) acts between Logistics and parties that act in the course of a profession or a business.
- 2.4 If any stipulation of the present Terms and Conditions is wholly or partially null and void or is nullified at any moment, the other stipulations of the present Terms and Conditions shall remain in full effect. The case ensuing, Logistics and the Consumer shall consult each other in order to agree on stipulations that replace the null and void stipulations and/or the nullified stipulations,

whereby the purpose and the tenor of the null and void stipulation and/or the nullified stipulation, shall be observed to the maximum possible.

- 2.5 In the event the present Terms and Conditions are translated, the text of the Dutch version shall exclusively be and remain decisive in the event of any contradiction.

3. OFFER AND ACCEPTANCE

- 3.1 An Agreement can come into being via Distance selling.
- 3.2 Each and every offer shall be free of obligation and shall have to be considered to be a whole, unless otherwise explicitly stated by Logistics. An offer shall lapse if the Product to which the offer relates, is no longer available in the meantime.
- 3.3 Logistics shall only accept an Order the moment it is confirmed in writing by Logistics.
- 3.4 If the Order of the Consumer deviates from what is offered in the offer, Logistics shall not be bound by it. The Agreement shall then not come into being in accordance with said deviating acceptance, unless otherwise stated by Logistics.
- 3.5 Logistics shall reserve the right to request the Consumer to provide a copy of proof of identification to verify the Order. If the Consumer refuses to comply with said request, Logistics shall be entitled to refuse the Order in accordance with article 3.6.
- 3.6 Logistics shall reserve the right to refuse an Order (Orders) without any further explanation. In the event Logistics refuses an Order, it shall notify the Consumer thereof in writing within seven (7) working days from the day the Order was placed.
- 3.7 If no written confirmation is sent due to circumstances such as the nature, the scope or the urgency of the order, the invoice made out by Logistics shall have to be considered to be the confirmation.
- 3.8 Logistics shall enter into each and every Agreement on the suspensive condition that the Consumer – and this at the sole discretion of Logistics – appear to be sufficiently creditworthy for the fulfilment of his financial obligations under the Agreement.

4. VISUAL INSPECTION TERM

- 4.1 In the event of a Distance selling, the offer shall contain a Visual Inspection Term of seven (7) working days commencing on the day of receipt of the ordered Products by or on behalf of the Consumer.
- 4.2 The Consumer shall enjoy a right of withdrawal throughout the Visual Inspection Term, whereby he shall have the possibility to return the received goods in due time, i.e. within ten (10) working days after delivery or state that he does not want to make use of the Services that are offered, all this without any obligation on the Consumer's part other than the compensation of the direct costs relating to a return shipment. The Products shall have to be shipped back in the original packaging (including accessories and the corresponding documentation) and in the condition as new. In the cases in which (also) Services are offered, the right of withdrawal shall be understood to be a period of reflection to which the stipulations of the present Terms and Conditions regarding the Visual Inspection Term, shall apply unimpaired.
- 4.3 If the Consumer has used or encumbered the Products or if they are damaged in any way, the right to dissolution in the sense of the present article shall lapse. Having due regard to the stipulations in the previous sentence, Logistics shall, following receipt and check of the Products received back, confirm the dissolution of the purchase by return of mail and shall make sure that the full purchase price will be paid back to the Consumer within thirty (30) days from the proper receipt of the complete return shipment.
- 4.4 Limitations of and exclusions from the Visual Inspection Term shall be clearly stated by Logistics in accordance with the stipulations of article 7:46d 'Burgerlijk Wetboek' (The Netherlands Civil Code) (BW).
- 4.5 The Consumer may only actually rely on the Visual Inspection Term in the manner stated by Logistics with the offer and/or completion.

5. PRICES AND PAYMENT

- 5.1 Unless otherwise stated, all prices shall be in Euro inclusive of VAT and other government levies and/or duties as well as travelling and accommodation costs and shipping costs potentially to be made within the framework of the Agreement.
- 5.2 If a price has been agreed with the Consumer, Logistics shall nevertheless be entitled to increase the price. If the prices are increased within three (3) months after conclusion of the Agreement, the Consumer can dissolve the Agreement. If the prices are increased after three months from conclusion of the Agreement, the Consumer shall have the right to dissolve the Agreement if the price increase amounts to more than 5%.
- 5.3 Logistics shall not be held to incorrect price quotations and other inaccuracies in the offer, advertisements, publications, the order confirmation, on invoices or in other records if the Consumer should understand or should have understood in reason that there is a matter of an apparent mistake or writing error.
- 5.4 In the event of a Sale from distance, all payments shall have to be made within fourteen (14) days from the date of invoice, unless explicitly agreed upon otherwise, without any right to discount, set-off or suspension, in the manner to be stated by Logistics in the currency in which the invoice is made out.
- 5.5 Upon expiry of twenty (20) days from the date of invoice, the Consumer shall be in default by operation of law and the Consumer shall from that moment onward owe interest equalling the statutory interest pursuant to article 6:119 'Burgerlijk Wetboek' (The Netherlands Civil Code). The rent on the amount due and payable, shall be calculated as from the moment the Consumer is in default up to the moment of payment in full of the entire amount owed.
- 5.6 If Logistics has to take collection measures upon expiry of the term referred to in article 5 section 5, the Consumer shall owe all the extrajudicial costs in accordance with "Rapport Voorwerk II" (Preliminary Work Report II). If, however, Logistics has incurred higher collection costs that were necessary in reason, the costs actually incurred shall qualify for compensation. The judicial and foreclosure costs potentially incurred, shall equally be recovered from the Consumer. Judicial costs shall in any case be understood to be the statements of expenses of lawyers and attorneys of record. The Consumer shall equally owe interest on the collection costs owed.
- 5.7 In the event of bankruptcy or suspension of payments of the Consumer or an application to this effect, the claims Logistics has on the Consumer and the Consumer's obligations vis à vis Logistics, shall be immediately due and payable.

6. DELIVERY

- 6.1 In the event of a Sale from distance, Products that can be delivered from stock, shall be shipped out immediately after the order. Logistics may charge shipping costs to ship the Products. The delivery shall be made to the postal address known to Logistics, not being of a temporary nature, and by surrendering the Products to the natural person present at said address. To the extent Products cannot be delivered from stock, Logistics shall notify the customers thereof and shall indicate a delivery period in the written confirmation of the Order to the Consumer.
- 6.2 Subject to proof to the contrary, Logistics shall have complied with its obligation to deliver the moment Logistics has presented the ordered Products to the Consumer once. In the event of delivery at home, the report of the transport company containing the refusal to accept the Products or the absence of the Consumer, shall serve as full proof that the delivery has been presented, subject to proof to the contrary.
- 6.3 Products not taken delivery of by the Consumer, shall remain at the disposal of the Consumer and shall be stored by Logistics for the risk and account of the Consumer.
- 6.4 In the event of Direct sale, the delivery shall be made by transferring the title to the good to the Consumer following payment of the purchase price. The stipulations 6.2 and 6.3 shall not apply to delivery under a Direct sale.

7. DELIVERY PERIOD

- 7.1 The delivery period shall only be stated approximately and shall never be considered to be a strict and/or final term of delivery.
- 7.2 The delivery period shall commence following acceptance of the Order by Logistics, following which Logistics shall attempt to deliver the Order within three (3) working days.

- 7.3 When the delivery period is exceeded due to force majeure, Logistics shall not be in default and shall not be held to pay any damages to the Consumer.
- 7.4 In the event the delivery period is exceeded due to circumstances other than force majeure, the default shall commence following a timely notice of default from the Consumer and the Consumer may claim damages from Logistics having due regard to the following rules and restrictions:
- a. the compensation payable by Promese Logistics shall be fixed at an amount equalling the amount of the actual direct damage sustained by the Consumer to the extent said damage shall be satisfactorily demonstrated; and
 - b. the overall compensation payable by Logistics shall under no circumstances amount to more than the price agreed upon in the Order concerned.

8. GUARANTEES

- 8.1 Logistics shall guarantee that delivered Products / Products to be delivered meet the usual standards and requirements that can be imposed on them in reason at the time of delivery and for which they are intended in the event of normal use in The Netherlands. The guarantee referred to in the present article shall apply to Products that are intended for use within The Netherlands. In the event they are used outside The Netherlands, the Consumer shall have to verify himself whether their use is suited for the use in the country concerned and whether they meet the conditions imposed on them in said country. Use outside The Netherlands shall not be covered by the guarantee applying by virtue of the present article.
- 8.2 The guarantee referred to in section 1, shall apply for a period of six (6) months after delivery, unless otherwise results from the nature of the delivered Product(s) or parties have agreed otherwise. If the guarantee given by Logistics concerns a Product and/or Products that was and/or were produced by a third party, the guarantee shall be limited to the guarantee the producer of the Product and/or Products gives. Upon expiry of the guarantee period, all the costs for repair or replacement, including administrative costs, shipping costs and call-out charges, shall be charged to the Consumer.
- 8.3 Logistics shall provide the Consumer with a written certificate of guarantee. In the absence thereof, the proof of purchase in the event of a Direct sale and the invoice in the event of a Distance selling, shall serve as certificate of guarantee.
- 8.4 If the delivered Products / Products to be delivered do not meet the guarantee as referred to in section 1, Logistics shall repair or replace the good at the discretion of Logistics, within a reasonable term after receipt thereof or, if shipping the good back is not possible in reason, after written notification of the defect by the Consumer. In the event of replacement, the Consumer shall undertake now for then to return the Product to be replaced to Logistics and to transfer the title to it to Logistics.
- 8.5 Each and every form of guarantee shall lapse if a defect has arisen as a consequence of or resulting from the injudicious or improper use thereof or – if applicable – after use after the best-before date, improper maintenance thereof by the Consumer or when the Consumer or third parties have modified the Product and/or the Products or have tried to do so, have attached other parts to them that should not be attached to them or if the Products have been treated or processed in any way other than prescribed, without the consent in writing to that effect of Logistics. The Consumer shall equally not be entitled to the guarantee if the Defect has arisen due to or as a result of circumstances beyond the control of Logistics, including weather conditions (such as, for instance, but not exclusively, rain or temperatures) and the like.
- 8.6 If Products delivered by Logistics show a defect, the liability of Logistics vis à vis the Consumer shall be limited to what is provided for in the present article.
- 8.7 Without prejudice to the above, Logistics shall not be liable for damage to be blamed on wilful intent and/or gross negligence and/or imputable acts or injudicious or improper use on the part of the Consumer.
- 8.8 The present guarantee conditions shall not affect the statutory rights of the Consumer.

9. COMPLAINTS

- 9.1 The Consumer shall have to check the delivered Products forthwith upon receipt for potential defects and report them in writing to Logistics as soon as possible but not later than within five

- (5) days after the day the Products were made available to the Consumer, all this at the risk of forfeiting of rights.
- 9.2 The Consumer shall have to report an invisible Defect in writing to Logistics within a reasonable term, i.e. two (2) months after the Defect was actually noticed, all this at the risk of forfeiting of rights.
- 9.3 Complaints about the amount of the invoice shall have to be made known to Logistics in writing within fourteen (14) days after the invoice concerned was dispatched.
- 9.4 The onus of proof of the timely submission and the correctness of the complaint shall be on the Consumer. The Consumer shall be held to lend Logistics all and every co-operation to an inquiry into the alleged Defects.
- 9.5 Minor deviations and/or deviations and differences in quality, colour, dimensions and the like that are generally accepted in the industry, can never lead to a ground for complaints.
- 9.6 If a complaint is found to be well-founded further to the stipulations set out hereinbefore, the rule shall apply that Logistics has to replace the Products without charging any costs in this respect. The Consumer shall not be entitled to any supplementary damages.
- 9.7 If the Consumer has not filed a complaint within the terms referred to in the previous terms, or if the delivered Products continue unabated to be at the Consumer's disposal, he shall be deemed to have approved the delivered Products and the Consumer shall have to pay the purchase price, without prejudice to the rights and powers vested in him by law and/or by virtue of the present Agreement.
- 9.8 If the Consumer is authorised by virtue of the present article to return a Product to Logistics, Logistics shall see to it that the amount paid by the Consumer shall be transferred back into the bank account and/or giro account of the Consumer within thirty (30) days after receipt of the Product.

10. RETENTION OF TITLE

- 10.1 All the Products delivered by Logistics within the framework of the Agreement, shall remain the property of Logistics and/or, the case ensuing, the property of a third party, until the Consumer has properly complied with all of his obligations resulting from the Agreement(s) concluded with Logistics.

11. TRANSFER OF RISK

- 11.1 The risk of loss, damage or decrease in value shall transfer to the Consumer at the moment of delivery as it has to be made pursuant to the present Terms and Conditions.

12. DISSOLUTION

- 12.1 Logistics shall be authorised to suspend performance of the Agreement or to dissolve the Agreement, if:
- (a) the Consumer fails to comply with the obligations by virtue of the Agreement or fails to comply with them completely or in due time;
 - (b) circumstances come to the knowledge of Logistics after conclusion of the Agreement, which give Logistics good grounds for fearing that the Consumer shall not comply with his obligations. In the event there are good grounds for fearing that the Consumer will only partially or not properly comply with his obligations, the suspension shall only be allowed to the extent the shortcoming justifies it;
 - (c) the Consumer has been declared incapable of contracting or has been deprived of his liberty by virtue of a Court order;
 - (d) the data provided to Logistics by the Consumer turn out not to correspond with the actual situation.
- 12.2 If the Agreement is dissolved, the claims Logistics has on the Consumer shall be immediately due and payable. If Logistics suspends compliance with the obligations, Logistics shall retain its claims under the law and by virtue of the Agreement.
- 12.3 Logistics shall at all times retain the right to claim damages.

13. FORCE MAJEURE

- 13.1 Parties shall not be held to comply with any obligation if they are prevented to do so due to a circumstance they cannot be blamed for and which is not for their account either by law, a legal act or generally accepted practice.
- 13.2 If a failure to comply with a contractual obligation is the result of force majeure on the part of either party, the other party may dissolve the Agreement. The party invoking force majeure shall in that case only be liable for the damage of the other party by virtue of article 6:78 'Burgerlijk Wetboek' (The Netherlands Civil Code) if and to the extent it enjoys a benefit in connection with its failure it would not have enjoyed had it performed the Agreement properly, up to a maximum equalling the amount of said benefit.
- 13.3 In addition to what is stated in this respect in the law and case law, force majeure in the present Terms and Conditions shall in any case be understood to be all foreseen or unforeseen causes coming from outside beyond the control of Logistics but which entail that Logistics is not able to comply with its obligations including industrial action at the Logistics enterprise as well as non-compliance with their obligations vis à vis Logistics by suppliers.
- 13.4 Logistics shall have the right to invoke force majeure if the circumstance that prevents further compliance with its obligation(s) by Logistics, takes effect after Logistics should have complied with its obligation.
- 13.5 Parties may suspend the obligations by virtue of the Agreement throughout the period the force majeure lasts. If said period last longer than two (2) months, either party shall be entitled to dissolve the Agreement without any obligation to pay the other party any damages.
- 13.6 If Logistics has partially complied or will be able to comply with part of its obligations by virtue of the Agreement the moment the force majeure took effect, and an independent value has to be attributed to the part complied with or to be complied with, Logistics shall be entitled to invoice the part complied with or to be complied with, separately. The Consumer shall be held to pay said invoice as if a separate agreement were concerned.

14. INDEMNIFICATION

- 14.1 The Consumer shall indemnify Logistics against potential claims lodged by any third party that sustains damage in connection with the execution of the Agreement, the cause of which is to be attributed to a party other than Logistics.
- 14.2 If Logistics would be held liable by that virtue by any third party, the Consumer shall be held liable to assist Logistics both in and out of court and to forthwith do all and everything he may be expected to do in that case. Should the Consumer fail to take proper measures, Logistics shall be entitled to do so itself without any need for a notice of default. All costs and damage that arise on the part of Logistics and third parties, shall be entirely for the account and risk of the Consumer.

15. INTELLECTUAL PROPERTY

- 15.1 Unless otherwise explicitly agreed upon in writing, the full copyrights and all other intellectual and industrial property rights relating to the Products and/or Services delivered and/or provided by Logistics, such as trademark rights, model rights, patent rights, sui generis, database rights and the like, shall exclusively be vested in Logistics and/or the latter's suppliers.
- 15.2 Parties shall undertake to take sufficient measures to ensure secrecy in respect of each other's data of a confidential nature that come to their knowledge during the execution of the Agreement.

16. PROTECTION OF THE DATA OF THE CONSUMER

- 16.1 Logistics collects, uses and sends out the personal data that relate to the Consumer in accordance with the current national and European legislations and rules and regulations.
- 16.2 Logistics shall respect the privacy of the Consumer and shall be the only owner of the information obtained via the Logistics website, unless stated otherwise. The information provided by the Consumer, shall not be sold, shared or leased to any third party in any other way than published in the privacy statement on the website.
- 16.3 Logistics shall be entitled to make information about a visitor public when there is reason to assume that disclosing information is necessary to identify, get in touch with or institute legal action against someone who, wilfully or not, prejudices or damages the rights or the property of Logistics, of other users of its web site or other parties that may sustain damage due to such

actions. Logistics shall be entitled to release information about users when it is of the opinion in good faith, that such is required by law.

17. APPLICABLE LAW AND COMPETENT COURT

- 17.1 Dutch law shall apply to all legal relationships between Logistics and the Consumer, including in the event an agreement is wholly or partially executed abroad or if the Consumer lives abroad. The applicability of the Vienna Sales Convention (CISG) shall be explicitly excluded.
- 17.2 In the event a dispute arises between parties, the Court in the District of 's Hertogenbosch shall be the Court that is exclusively competent to take cognisance of said dispute, unless the Consumer opts for the competent Court according to the law or by virtue of the Convention to settle the dispute, within one month after Logistics has invoked the present clause in writing vis à vis the Consumer.
- 17.3 Parties shall only turn to the Court when they have exerted themselves to the fullest to settle a dispute in mutual consultation.

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF PROMESE LOGISTICS
FOR THE RETAIL TRADE**

1. GENERAL

- 1.1 The present General Terms and Conditions of Sale and Delivery ("Terms and Conditions") shall apply to all offers, agreements and deliveries of the private company with limited liability Promese Logistics B.V. ("Logistics"). The most recent version of said Terms and Conditions shall always apply.
- 1.2 The Terms and Conditions shall be sent to the Buyer for no consideration at the Buyer's first request to that effect. The Terms and Conditions can also be consulted at the url www.promese.eu.
- 1.3 In the present Terms and Conditions, the following shall be understood to be:
- a) **Agreement:** the agreement to have Products delivered to the Buyer by Logistics on behalf of the Client(s), each change or supplement thereto, as well as all (legal) acts in preparation and/or execution of the Agreement
 - b) **Buyer:** the customer from whom Logistics accepts Orders with the consent of the Client(s) concerned;
 - c) **Client(s):** each and every natural person or legal entity who or that instructs the sale and distribution of Products to the Buyer via Logistics;
 - d) **Credit Limit:** the maximum amount (inclusive of VAT) a Buyer shall owe Logistics at any point in time for the purchase of logistic services from Logistics, which said maximum amount shall be periodically reconsidered for each Buyer by Logistics;
 - e) **Logistics:** the private company with limited liability Promese Logistics B.V., having its registered office in Eindhoven, listed in the Trade Register under file number 17062755, as well as its legal successors under general or singular title that acts as seller on behalf of the Client(s) of all the Products to be delivered by it with the consent of the Client(s);
 - f) **Order:** the assignment given by the Buyer to Logistics;
 - g) **Products:** all the goods delivered or goods to be delivered by Logistics in execution of the Agreement that are not the property of the Client(s);
 - h) **Right of Return:** a clause agreed upon between the Buyer and the Client(s) pursuant to which the Buyer can exchange or return goods to the Client(s) in certain circumstances. The aforementioned circumstances shall not include manufacturing faults of the Products.
- 1.4 In order to avoid any misunderstanding, it shall be laid down that Promese will act as mandatory of its Client(s). Unless otherwise explicitly agreed upon, the rule shall apply that regardless whether Promese acts in its own name or in the name of the Client(s), the economic entitlement as well as the economic risk shall be with the Client(s). To the extent claims of Promese or amounts owed to Promese are referred to in the present Terms and Conditions, they shall refer to Promese in its capacity as mandatory of the Client(s); said claims and/or amounts shall accrue to the Client(s) in the legal and economic sense.
- 1.5 Unless otherwise explicitly agreed upon, the present Terms and Conditions shall apply to all offers, orders, order confirmations, arrangements, services and all agreements of any kind whatsoever resulting therefrom.
- 1.6 The Buyer shall accept the applicability of the present Terms and Conditions by the mere fact that a request for information is put in and/or Logistics is requested to submit an offer. General uniform or specific general terms and conditions (of purchase) of a (potential) Buyer, shall be explicitly rejected by Logistics in all cases, including in the event the other party refers to the latter general terms and conditions in a request to Logistics to submit an offer.
- 1.7 If one or more stipulations of the present Terms and Conditions is / are wholly or partially null and void or is / are nullified for any reason whatsoever, the other stipulations of the present Terms and Conditions shall remain in full effect and the Buyer and Logistics shall consult each other in order to agree on new stipulations that replace the null and void stipulations and/or the nullified stipulations, whereby the purpose and

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the tenor of the null and void stipulation and/or the nullified stipulation, shall be observed to the maximum possible.

- 1.8 Logistics shall be entitled to lay down unilaterally deviating and/or supplementary conditions for certain categories of Products. Such deviating and/or supplementary conditions shall at all times be submitted to the Buyer prior to the moment any agreement comes into being.
- 1.9 In the event the present Terms and Conditions are translated, the text of the Dutch version exclusively, shall be and remain decisive in the event of any contradiction.

2. ACCEPTANCE OF CUSTOMERS AND ORDERS

- 2.1 The Agreement between Logistics and the Buyer shall only come into being when the Client has approved to the acceptance of the Buyer and the Order and when the Order has been confirmed in writing to the Buyer by Logistics.
- 2.2 The Client shall independently determine to which potential customers the Products agreed upon shall be delivered via Logistics and on which conditions (starting orders, discounts, prices and the like).
- 2.3 The Buyer shall undertake to observe the conditions he has agreed upon directly with the Client, in the absence of which Logistics shall be entitled at the first request of the Client to that effect, to cease the delivery of Products.

3. DELIVERY (PERIOD)

- 3.1 Delivery period shall be understood to be the terms stipulated in the Agreement within which the Products have to be delivered.
- 3.2 Delivery periods shall only be given approximately and shall only be indicative.
- 3.3 Exceeding the delivery period, including but not exclusively, exceeding the term due to complications during the transport of the Products, shall not entitle the Buyer to any kind of damages, including but not exclusively, consequential damage, nor to non-compliance with any obligation resulting from the present Agreement or another agreement linked to it, nor to the dissolution of the Agreement.
- 3.4 If Products cannot be delivered from stock, Logistics shall forthwith notify the Buyer thereof in writing. Logistics shall put Products that cannot be delivered from stock, on statement if the Buyer so wishes. The Buyer shall have the right to cancel Products put on statement unless the Products concerned were ordered especially for the Buyer ("special import") or unless the Buyer and Logistics have agreed on specific conditions (of delivery) with respect to the Products concerned. Products on statement can be cancelled by Logistics without prior notification, which will not give rise to any right to any kind of damages on the part of the Buyer.
- 3.5 Logistics shall take care of the transport of the Products to the Buyer. The way of delivery of the Products shall be determined by Logistics and shall be communicated to the Buyer in writing.
- 3.6 The Buyer shall bear the transport costs. The Buyer can ask Logistics for the current rates. The Products shall be deemed to have been delivered at the moment the Products are made available to the Buyer by Logistics. The Buyer shall only be allowed to pick up the Products at Logistics' with the explicit consent in writing to that effect of Logistics and entirely for the Buyer's risk and account.
- 3.7 If the Buyer chooses "express delivery" of Products, the extra charges shall be for the Buyer's risk and account. The Buyer shall have to notify Logistics in due time and in writing an "express delivery" is being chosen.
- 3.8 In the event Logistics delivers the Products to be delivered to the Buyer on condition of "cash on delivery" and the Buyer refuses for any reason whatsoever to pay the Products upon delivery resulting in the fact that the Products are shipped back to Logistics, Logistics shall be entitled to charge all the corresponding costs to the Buyer, with a minimum of EUR 20.- (twenty Euro) per return shipment.
- 3.9 Without explicit consent to that effect in writing of Logistics, the Buyer shall not be allowed to export all or part of the Products to countries that are not a part of the European Economic Area.

4. DELIVERY OF AUDIO REPRODUCTIONS

- 4.1 Supplementary to the stipulations of article 3 of the present Terms and Conditions with respect to deliveries of Products by Logistics to the Buyer in general, the following conditions shall apply to the delivery of audio reproductions.
- a) The Buyer shall not be allowed to directly or indirectly occupy himself with the rental of audio reproductions delivered by Logistics.
 - b) The Buyer shall undertake to include a clause in accordance with article 4.1.a and article 4.1.b of the present Terms and Conditions in each and every agreement the Buyer enters into with any third party, by virtue of which said agreement the Buyer uses, other than to the consumer, and trades in audio productions for his own non-commercial purposes.
- 4.2 If the Buyer fails to comply with the stipulations of article 4.1, the stipulations of article 8.2 shall apply.
- 4.3 The present article 4 shall equally apply to all the audio reproductions put on the market by the Buyer or by companies affiliated with the Buyer and that are the same as or similar to the audio reproductions that have been or are marketed in The Netherlands by Logistics.

5. DELIVERY OF AUDIOVISUAL REPRODUCTIONS

- 5.1 Supplementary to the stipulations of article 3 of the present Terms and Conditions with respect to deliveries by Logistics to the Buyer in general, the conditions set out in the present article 5 shall apply to the delivery of audiovisual reproduction(s).
- 5.2 The conditions set out in the present article shall apply to all agreements between Logistics and the Buyer under which audiovisual reproduction(s) are delivered by Logistics and the Buyer acquires both the right (on conditions to be referred to hereinafter) to sell them on and to rent them out. The conditions of the present article shall therefore not apply to agreements between Logistics and the Buyer under which Logistics makes audiovisual reproduction(s) available for rental exclusively and under which the ownership remains with Logistics or a third party.
- 5.3 The sale or rental of the audiovisual reproduction(s) by the Buyer shall only be allowed for showing in domestic circle (i.e. the family circle or circle of friends as referred to in article 12 section 4 of the Dutch "Auteurswet" (The Netherlands Copyright Act) and article 22 of the Belgian "Auteurswet" (Copyright Act). Therefore, it shall not be allowed to use or make the audiovisual reproduction(s) available for:
- a) public showing, such as showing within the context of a society, school or company or showing in a cinema or a television broadcast or in catering businesses, and;
 - b) making copies (duplications) of the works recorded on the audiovisual reproductions and/or of the cover.
- 5.4 The Buyer shall guarantee he will not use or have the audiovisual reproduction(s) used in violation of the stipulations of the present article 5 the Buyer shall undertake to impose the same prohibition on his customers. The Buyer shall guarantee that all the carriers he puts on the market, shall be provided with the "Warning" affixed to the audiovisual reproduction(s).
- 5.5 The notion "Warning" as referred to in article 5.4, shall be understood to mean the following:
*"All rights reserved. Subject to the consent of the parties entitled to the works, films, performances and phonograms recorded on the present image carrier, copying, renting out, lending out and public showing, shall be forbidden.
The present warning shall be supplemented by one of the texts hereinafter;
'ONLY INTENDED FOR SALE' or 'ONLY INTENDED FOR RENTAL'"*
- 5.6 The Buyer shall furthermore see to it – to the best of his knowledge and ability – that the user of the audiovisual reproduction(s) refrain from any showing other than showing in the domestic circle. If the Buyer is aware or must be aware of or suspects at any rate any unauthorised use of the audiovisual reproduction(s) by third parties, the Buyer shall be under the obligation to forthwith notify Logistics thereof in writing.
- 5.7 The Buyer shall only acquire the consent to rent out an audiovisual reproduction delivered to the Buyer, if it is stated on the reproduction concerned and on its box that

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is intended for rental and if the corresponding invoice states that a tape intended for rental is concerned. The consent to rent out the audiovisual reproduction cannot be passed on to a third party without explicit consent in writing to that effect of Logistics. Logistics shall guarantee that it has the authority to grant consent to rent out the audiovisual reproduction(s) with respect to the audiovisual reproduction(s) it offers for rental.

- 5.8 The Buyer shall guarantee Logistics that he shall sell, rent out or use or make the audiovisual reproduction available in any other authorised manner in the form in which Logistics has delivered them. The Buyer shall furthermore guarantee not to introduce any change to the audiovisual reproduction(s), the inlay cards or the packaging of the audiovisual reproduction(s), nor to replace them by other inlay cards or packaging means or similar means of expression, all this on penalty of an immediately due an payable penalty not subject to moderation of EUR 1,000.- (one thousand Euro) per changed reproduction, without the need for any notice of default.
- 5.9 The Buyer shall furthermore guarantee that he shall impose the stipulations of article 5.6 on the third parties to which he, in his turn, sells, rents out, etc., the audiovisual reproduction(s) and this equally on penalty of an immediately due an payable penalty not subject to moderation of EUR 1,000.- (one thousand Euro) for each individual violation per copy, regardless the right of Logistics to claim the excess damage sustained by it, on top of said penalty, without the need for any notice of default.
- 5.10 Logistics shall reserve the right to cease all further deliveries of audiovisual reproductions to the Buyer in the event the Buyer acts in violation of the stipulations of the present article 5.
- 5.11 The Buyer shall be under the obligation to give Logistics all the information that contributes, may contribute at any rate, to the establishment of compliance with the stipulations of the present article 5.

6. DELIVERY OF BOOKS

- 6.1 Supplementary to and/or contrary to the stipulations of the present Terms and Conditions, the conditions set out in the present article 6, shall apply to the delivery of books. To the extent the conditions set out in the present article 6 are in conflict with the other stipulations of the present Terms and Conditions, the stipulations of the present article 6 shall prevail.
- 6.2 Contrary to the stipulations of article 3.5, 3.6 and 3.7, books shall be delivered as an "express delivery" whereby the Buyer shall have the choice between "next day delivery" or "mail delivery", if and to the extent the conditions of a shipment by mail item are met,. The Buyer shall have to inform Logistics in writing of his choice in due time. The transport costs shall be for the Buyer's risk and account.
- 6.3 The books shall be deemed to have been delivered the moment the Products are made available to the Buyer.
- 6.4 Contrary to the stipulations of article 7, the prices and other costs shall be laid down in further arrangements to be made between Logistics and the Buyer.
- 6.5 Logistics shall be entitled to report to a Buyer that the latter has reached or is about to reach the Credit Limit that applies to him. The case ensuing as well as in the event there is serious and demonstrable doubt on the part of Logistics about the possibility to collect debts from the Buyer, Logistics shall be entitled to suspend the performance of the Agreement until the Buyer has furnished satisfactory security for the payment of the amounts he owes.
- 6.6 To the extent Promese and the Buyer agree that the provision of logistic services is for the risk and account of the Buyer, the conditions as laid down in enclosure 1 with the present Terms and Conditions, shall apply.

7. PRICE

- 7.1 Deliveries shall be made at the price applicable at the moment the Order was placed by the Buyer, whereby Logistics shall reserve the right to periodically modify the price as a result of modified quotes by the Client(s) who has (have) given Logistics instructions

regarding the provision of services concerning the sale and distribution of the Product(s).

- 7.2 All prices shall be net prices in cash, without discount and/or other levies, duties, excises, costs and extra charges, owed at the time of delivery of the Products.
- 7.3 With regard to deliveries of Products in respect of which the Buyer does not have the right to rent them out and whereby the transport method has been determined by Logistics, the transport costs Logistics will charge to the Buyer, shall amount to 0.25% of the net value of the invoice per shipment, with a minimum of Euro 2.- and a maximum of Euro 20.-.
- 7.4 With regard to deliveries of Products in respect of which the Buyer has the right to rent them out exclusively and whereby the transport method has been determined by Logistics, the transport costs Logistics will charge to the Buyer, shall amount to EUR 5.50 per shipment, to the extent the net value of the invoice of the delivery amounts to less than EUR 140.-. If the net value of the invoice equals or exceeds EUR 140.-, the delivery shall be made "carriage paid".
- 7.5 With regard to deliveries of Products in respect of which the Buyer does not have the right to rent them out and whereby the transport method has been determined by Logistics, the cash on delivery charges Logistics will charge to the Buyer, shall amount to 2% of the net value of the invoice per shipment, with a maximum of Euro 5.75 per shipment.
- 7.6 All prices and/or rates shall be in Euro and exclusive of VAT, copyrights potentially owed and taxes, levies and charges potentially imposed by government or semi-government bodies, unless otherwise explicitly agreed upon in writing.

8. INVOICING AND PAYMENT

- 8.1 Logistics shall send the Buyer an invoice for the Products Logistics has delivered on the day concerned, on working days excluding public holidays. Logistics shall send the Buyer an invoice for the services provided in the previous month, within five (5) days after expiry of the calendar month.
- 8.2 The Buyer shall pay an invoice within thirty (30) days from the date of invoice into a bank account stated by Logistics, in the absence of which the Buyer shall be in default without any written notice of default and shall owe the statutory commercial interest increased by 2% for each day or part thereof that payment remains forthcoming, commencing on the expiry date of the invoice up to and including the day of payment in full.
- 8.3 Complaints about damage, shortcomings and/or manufacturing faults, shall not suspend the Buyer's obligation to pay.
- 8.4 In addition to the principal and the interest for overdue payment, all the costs, both judicial and extrajudicial costs shall be payable by the Buyer, Logistics incurs to collect its claim as well as to safeguard its rights, to be increased by a statutory commercial interest to be increased by an interest of 2%. Judicial costs shall in any case be understood to include the statements of expenses of lawyers, experts and all those Logistics has instructed to assist with the collection and/or whom Logistics has instructed to conduct proceedings in this respect, even though the statements of expenses concerned are potentially higher than the amount the Court in the proceedings has budgeted due to costs at the expense of the party ruled against. Extrajudicial costs shall in any case be understood to include the statements of expenses and bills of expert (legal) advisors, debt-collection agencies, bailiffs and all those Logistics has instructed to assist with the collection out of court.
- 8.5 Logistics shall have the right to only deliver, at its own discretion, on condition of payment in advance or payment in cash or furnishing security or on conditions that deviate from those set out in the present article 8. The corresponding costs shall be for the Buyer's account. In the event of payment in cash, the payment shall be deemed to have been made the moment Logistics has actually received the payment from the Buyer.

- 8.6 Payments by the Buyer shall be made without any discount or set-off, unless otherwise explicitly agreed upon in writing. The Buyer shall never be entitled to suspend the payment of any invoice or to set it off against any claim on Logistics.
- 8.7 If the Buyer is in default, applies for suspension of payments, is bankrupt, ceases his business (activities) or if Logistics has any serious doubt that the Buyer shall be able to comply with his obligations in a proper and timely manner, the claims Logistics has on the Buyer shall be immediately due and payable.
- 8.8 Logistics shall at all times be entitled to demand security for compliance by the Buyer with the latter's (financial) obligations vis à vis Logistics, if Logistics has good grounds for fearing that the Buyer shall not comply with his obligations to pay or shall not comply with them in a timely manner. If the Buyer fails to furnish security, Logistics shall have the right to stop the (further) execution of the Agreement(s) until the demanded security has been furnished.
- 8.9 Payment by the Buyer at an earlier point in time, shall primarily serve to pay the interest owed by the Buyer and the collection costs incurred by Logistics and subsequently to pay the longest outstanding claims, even if the Buyer states that the payment relates to an invoice of a later date.

9. COPYRIGHTS / PIRACY

- 9.1 The Buyer shall not in any way be entitled to any copyright to the Products to be delivered and/or delivered that are recorded on (image and/or sound) material. The Buyer shall explicitly be prohibited to transfer the aforementioned material in any way whatsoever subject to an immediately due and payable penalty not subject to moderation of € 5,000.- (five thousand Euro) per image carrier and/or sound carrier, regardless the right of Logistics to claim the excess damage sustained by it, on top of said penalty, all this without the need for any notice of default.
- 9.2 The moment Logistics becomes aware of the fact that the Buyer apparently occupies himself, in the opinion of Logistics at any rate, or has occupied himself with trading in or otherwise exploiting sound carriers and/or image carriers on which recordings are reproduced, without the Buyer being able to demonstrate that he has obtained consent for said reproduction from the producer concerned and the artist concerned,
- a) Logistics shall be entitled to forthwith cease all deliveries to the Buyer and to keep them ceased, and;
- b) the Buyer shall owe Logistics an immediately due and payable penalty not subject to moderation of EUR 5,000.- (five thousand Euro) per violation, all this without prejudice to all the other rights of Logistics, including – but not limited to – the right to damages and/or to take legal action against the Buyer, potentially on penalty of an astreinte, without the need for any notice of default.
- 9.3 The Buyer shall guarantee Logistics and the organisations that combat piracy of which Logistics and/or the Client(s) are affiliates, that he shall not be involved, directly or indirectly, in any form of piracy, such as the unlawful duplication or publishing of works protected by copyrights as well as the rental of and trading in audiovisual reproductions on which recordings are reproduced, in violation of article 5., without having obtained the consent of the producer concerned or the artist concerned for said reproduction, publishing or rental, all this on penalty of an immediately due and payable penalty not subject to moderation of € 5,000.- (five thousand Euro) per violation without the need for any notice of default.
- 9.4 In the event the Buyer is in any way involved in piracy or the suspicion arises that this is the case, Logistics shall be entitled to forthwith cease all deliveries to the Buyer.

10. COMPLAINTS

- 10.1 To the extent the Client(s) and the Buyer have agreed on a Right of Return, Logistics shall execute the return procedure agreed upon between the Client(s) and the Buyer. Logistics shall at all times be entitled to ship back the Products returned by the Buyer under the Right of Return, to the Client(s).
- 10.2 The Buyer shall have to inspect the delivered Products forthwith upon delivery for potential defects and report them as soon as possible but not later than within two (2)

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weeks after receipt of the Products to Logistics using the return advice form, if shortcomings are concerned (code D) and/or the delivery of a wrong product (code C / D) and/or a product that was not ordered (code B), and within 180 days after receipt of the Products if quality defects (code A) have been noticed and the delivery with the Right of Return (code F) and the Products concerned, is not deleted from the catalogue of the Client(s) in accordance with the return procedure agreed upon with the Client(s) and the Buyer, all this on at the risk of forfeiting all rights.

- 10.3 The Buyer shall have to file complaints regarding transport damage with Logistics in writing within 48 hours after receipt of the Products.
- 10.4 Return shipments shall be for the risk and account of the Buyer.
- 10.5 The Buyer shall have to present the Products for transport by Logistics in accordance with the instructions given by Logistics.
- 10.6 Logistics shall reserve the right to refuse and/or not to execute return shipments as well as the corresponding crediting, if circumstances that came to the knowledge of Logistics after the Agreement was concluded, give Logistics good grounds for fearing that the Client will not comply with obligations resulting from said return shipments and the corresponding crediting, or will not comply with said obligations completely or in due time.
- 10.7 The proof of the timely filing as well as of the correctness of the complaint, shall be on the Buyer. The Buyer shall be held to render Logistics every assistance to the inquiry into the alleged defects.
- 10.8 Products taken receipt of can only be returned by the Buyer to Logistics, if said Products are accompanied by a return confirmation to be sent to the Buyer by Logistics. The Products to be returned shall have to be returned to Logistics in the same condition and packaging as the one the Buyer received them in. The Buyer shall make sure that the Products will be returned within ten (10) days after receipt of the return confirmation by Logistics, all this at the risk of forfeiting all rights.
- 10.9 If Logistics finds a complaint pursuant to the present article 10 to be justified, the rule shall apply that Logistics has to replace the Products without charging any costs in this respect. If the Products cannot be replaced or if Logistics does not opt for replacement of the Products, Logistics shall credit the Buyer's account with the purchase price of the returned Products. The Buyer shall not be entitled to any additional damages.
- 10.10 Reliance on the present article 10 shall not be suspend the Buyer's obligation to pay. Logistics shall not be held to handle any complaint filed by the Buyer if the Buyer fails to comply with it in a complete manner or in due time.
- 10.11 Audiovisual Products that are exclusively intended for rental purposes can be exchanged for no consideration in the event of a quality defect, within one (1) month from the date of invoice. If the quality defect is reported later than one (1) month from the date of invoice, the Buyer shall have the right to have it exchanged against payment of EUR 16.- (sixteen Euro) exclusive of VAT.

11. RETENTION OF TITLE

- 11.1 All Products delivered by Logistics within the framework of the Agreement, shall remain the property of the Client(s) up to the moment the Buyer has paid all the amounts due to Logistics regarding the consideration for the Products delivered or to be delivered by Logistics to the Buyer by virtue of the Agreement as well as by virtue of all other agreements concluded with the Buyer, as well as the claims regarding the failure to perform such agreements. Notwithstanding the retention of title, the Buyer shall be allowed to sell the Products within the framework of his normal business activities. However, normal business activities shall not be understood to be closing-down sales, sales at dumping prices and the like.
- 11.2 If and the moment the Buyer is in default with the compliance with one or more of his obligations or acts in violation of the stipulations set out hereinafter, Logistics shall be entitled to recover the Products delivered as referred to in the present article 11, as the property of Logistics without judicial intervention and the Buyer shall have to render every assistance to said recovery. All the costs of recovering the Products encumbered by a retention of title, shall be for the account of the Buyer. If the Buyer refuses to

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render every assistance to said recovery of the Products despite a warning to do so, the Buyer shall be in default in this respect and shall forfeit an immediately due and payable penalty of € 500.00 (five hundred Euro) for each day he is / continues to be in default in this respect, whereby part of a day shall be put on a par with a full day.

- 11.3 The Buyer shall undertake to pledge the claims on third parties resulting from the sale of the delivered Products to Logistics by way of security for the claims of Logistics on the Buyer.
- 14.1 The Buyer shall be under the obligation to properly insure the Products and to keep them properly insured against the usual risks until Logistics has been paid in full. The same shall also apply to transport risks if the Buyer has received delivery of the Products "ex warehouse Logistics" with the consent of Logistics. If Products get lost / destroyed, they shall be deemed to have been substituted by insurance money. Upon the first request to that effect of Logistics, the Buyer shall assign his rights pursuant to the insurance policy, to Logistics.

12. LIABILITY / DAMAGES

- 12.1 Logistics shall not be liable for any damage, both direct and indirect, including but not limited to, trading loss, consequential damage, damage to movable and immovable goods (of third parties) or people by any cause whatsoever on the part of the Buyer or the third party (third parties) in connection with the Products delivered by Logistics, unless the damage has arisen as a consequence of intent or gross negligence on the part of Logistics.
- 12.2 In the event Logistics is held liable despite the stipulations of the present article 12, to compensate any damage, the liability for the compensation shall be limited to the level of the amount of the transaction that is involved with the individual transaction or maximum to the payment to be made by the insurer of Logistics if the value of the transaction exceeds the amount to be paid by the insurer.
- 12.3 The Buyer shall indemnify Logistics against any claim lodged by any third party in respect of damage that is the consequence of the Products delivered by Logistics.

13. FORCE MAJEURE

- 13.1 Each and every obligation of parties to perform the Agreement, shall be suspended for the duration of the period during which it is impossible to perform the Agreement or to perform it properly, due to circumstances of force majeure. Parties shall notify each other of certain situation as soon as possible.
- 13.2 In this respect, force majeure shall be understood to be: each and every unforeseen and/or or foreseeable circumstance or not, beyond the will of a party due to which the other party can no longer demand in reason that the Agreement be performed.
- 13.3 Force majeure shall in any case be concerned, but not exclusively, in the event of fire, flooding, industrial action, epidemics, (civil) war, riots, floods, water damage, terrorism, government measures, the unavailability (non-timely availability) of permits, trade embargos, labour unrest, power cuts, interruptions of operations, transport difficulties, unforeseen technical complications, breach of contract by or delays on the part of the suppliers and subcontractors and unavailability or overdue or insufficient availability of materials, transport, fuel, energy and labour force.
- 13.4 If the performance of the Agreement has been suspended for three (3) months or the moment it becomes a certainty that it will last three (3) months, either party can claim by registered mail that the Agreement either be adjusted to the circumstances, or be dissolved taking effect immediately (for the part concerned), without the parties being held to reciprocally pay damages.
- 13.5 If the moment the force majeure took effect Logistics had already complied with part of its obligations agreed upon, Logistics shall be entitled to separately and prematurely invoice the activities already carried out and the Buyer shall have to pay said invoice as if a separate transaction were concerned

14. TERMINATION OF THE AGREEMENT

- 14.1 Logistics shall have the right to either terminate each Agreement and to claim the goods delivered back as its property, or to claim any amount the Buyer owes Logistics in its entirety or to claim damages from the Buyer, by the mere fact that one of the circumstances listed hereinafter arises and without the need for any judicial intervention or notice of default, if:
- a) the Buyer fails to comply with any of his obligations vis à vis Logistics or fails to comply with it in a timely or proper manner and has not remedied the shortcoming within fourteen (14) days from the moment Logistics has sent the Buyer a written notice of default;
 - b) the Buyer is declared bankrupt or a request to that effect has been filed, suspension of payments has been filed for or granted, application of the debt rescheduling arrangement has been filed for or granted;
 - c) a prejudgement attachment is made on or execution is levied on all or parts of the Buyer's assets;
 - d) force majeure as referred to in article 13 lasts longer than three (3) months;
 - e) the financial position of the Buyer entails risks in the opinion of Logistics, unless the Buyer furnishes sufficient security upon the first warning of Logistics and to the satisfaction of Logistics;
 - f) the Buyer is dissolved or wound up and a merger or a demerger (split-off) takes place;
 - g) the data provided to Logistics by the Buyer prove to be inconsistent with the actual situation.

15. INSPECTION

- 15.1 Throughout the term of the Agreement, the Buyer shall grant Logistics and/or the organisations referred to in article 8.3 access to all the rooms where Products are or shall be stored, for inspection.
- 15.2 The inspections referred to in article 15.1 may be carried out at any point in time during a working day. Logistics shall inform the Buyer in writing of an intended inspection not later than five (5) working days prior to the inspection concerned, whereby Logistics shall state the purpose of the inspection, the work method, the location(s) where the inspection will be carried out and the number of persons that will be present on the part of Logistics.

16. APPLICABLE LAW / COMPETENT COURT

- 16.1 Dutch law exclusively, shall apply to the Agreement between Logistics and the Buyer and all the agreements resulting therefrom, with the exclusion of the applicability of the Vienna Sales Convention 1980 (CISG).
- 16.2 All disputes relating to or in connection with an offer, assignment, agreement, or engagement, shall in the first instance have to be settled by the competent Court in the District of 's-Hertogenbosch. However, Logistics shall be entitled but never obligated to submit any dispute to the Court in the place of residence of the Buyer or of any other party involved in the dispute. Logistics shall furthermore reserve the right to summon the Buyer to appear before another designated Court if Logistics is of the opinion that the Buyer is held to indemnify Logistics.

17. MISCELLANEOUS

- 17.1 The Buyer shall not be entitled to assign or delegate his rights or obligations by virtue of the Agreement without prior consent in writing to that effect of Logistics. Logistics shall not refuse its consent on unreasonable grounds.
- 17.2 If Logistics has concluded one Agreement with two or more (legal) persons, each of said (legal) persons shall be jointly and severally liable for the full performance of the obligation that results for them from said Agreement. The conclusion of one Agreement with two or more (legal) persons shall equally be concerned when Logistics is requested to forward deliveries and/or invoices to affiliated companies. The latter shall then also be deemed to have bound themselves jointly and severally. Upon the first request to

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that effect, said (legal) persons shall sign a statement in which they confirm that they have bound themselves jointly and severally for the fulfilment of the obligations by virtue of the Agreement.

- 17.3 Information provided and advice given by Logistics, shall be of a general nature and without any obligation. The Buyer himself shall be responsible for the implementation of the advice given by Logistics.
- 17.4 The party that has picked the means of communication used, shall bear the risk for any misunderstanding, corruption, delay or improper receipt of assignments and communications in the interaction between the Buyer and Logistics due to the use of mail, telephone, telefax or any means of communication whatsoever.

ENCLOSURE 1 SUPPLEMENTARY TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES FOR THE DELIVERY OF BOOKS PURSUANT TO ARTICLE 6.6 OF THE TERMS AND CONDITIONS

General

- a. If Logistics and the Buyer have agreed that the provision of logistic services for the delivery of books shall be for the Buyer's account in accordance with article 6.6 of the Terms and Conditions, the supplementary Terms and Conditions listed hereinafter shall apply.
- b. Logistics and the Buyer shall agree in writing which services Logistics shall provide within the framework of the provision of logistic services on the instructions of the Buyer.

Logistics

- c. Logistics shall provide the logistic services in accordance with the specifications and/or instructions given by the Buyer. The specifications shall be made available to Logistics together with the submission of the order form and shall form an integral part of the Agreement. Logistics shall not be liable for any damage on the part of the Buyer that has arisen as a consequence of the failure to provide the aforementioned specifications and/or instructions and or the overdue or incorrect supply of the aforementioned specifications and/or instructions.
- d. With respect to released Order(s) which are reported to Logistics on Monday, Tuesday and Wednesday before 01:00 PM and on Thursday before 01:30 PM, with the exception of public holidays, and which are not stopped by Logistics, the rule shall apply that 99% of the released orders shall be shipped out the same day.
- e. With regard to returns, the rule shall apply that in 90% of the cases, the Products shall be put in stock by Logistics at the latter's location and shall be credited within 48 hours. With regard to the return procedure, the document 'Return Procedure', which forms part of the present Supplementary Terms and Conditions, shall be referred to.

Customer Services

- f. Upon the Buyer's first request to that effect, Logistics shall carry out back-office activities for the Buyer. Orders arrive at the customer service department ("Customer Service"), which shall subsequently see to it that the Orders be processed and end up at the right departments.
- g. Logistics has a Customer Service department that can be reached by telephone to answer questions of the Buyer during regular working days from 08:30 AM until 05:00 PM with the exception of recognised public holidays.
- h. Logistics aims for the maximum availability of its Customer Service. Permanent availability shall, however, not be guaranteed.
- i. Logistics shall provide the customer services in accordance with the internal specifications and/or instructions that apply within Logistics. Logistics cannot be bound by standards the Buyer deems desirable within the framework of the provision of the customer services.
- j. The Buyer shall have to comply with the specifications and/or instructions given to him by Logistics.
- k. Logistics shall see to it that employees be available at the Customer Service department who also speak French and/or English in addition to Dutch.
- l. To the extent such be possible, Logistics shall see to it that questions to its Customer Services department be answered immediately but not later than within 24 hours from receipt of the question, provided a regular working day is concerned.
- m. With respect to all the released Order(s) which are reported to Logistics on Monday, Tuesday and Wednesday before 01:00 PM and on Thursday before 01:30 PM, with the exception of public holidays, and which are not stopped by Logistics, the rule shall apply that the released orders shall be shipped out the same day.

Transport

- n. Logistics shall reserve the right to contract transport out to third parties with which Logistics has concluded transport agreements.

- o. With regard to mail, the following service levels shall apply, unless they are deviated from by Logistics and the Buyer in writing:

General service level	World-wide, envelopes up to 2 kg, low speed, international mail, low service level
Transport company (preferred)	TNT, Spring, DHL Globalmail
Rates	Basic price + price per kg
Delivery times	Average delivery time (estimate): Europe 3 – 4 days; North America 5 – 7 days; Japan / Australia / New Zealand 7 days; Other world: 9 – 11 days.
Track & Trace	No
Signature for receipt	Possible in a limited number of countries for an additional charge. To be agreed.
Time deliveries	No
Performance	Not known
Damage	No guarantees
Incoterm	DDU
Fuel surcharge	No
NEA / UPU Index	Yes
Applicable Terms and Conditions	AVP (Algemeen Vervoer voor Partijen Buszendingen [General Transport for Batches of Mailbox Shipments])
Liability for loss / damage	No liability
Liability for delays	No liability

- p. With respect to the express delivery, the following service levels shall apply, unless deviated from in writing by Logistics and the Buyer:

General service level	Structured express network, quick transport, medium-heavy transport, world-wide, high service level
Transport company (preferred)	DHL, TNT, DPD, GLS
Rates	Per kg
Track & Trace	Yes
Signature for receipt	Yes, can be retrieved and for an additional charge.
Time deliveries	Yes, for certain countries and for an additional charge
Performance	97% on average
Damage	Sign off on CMR and report within 48 hours
Incoterm	DDU
Fuel surcharge	Yes
NEA / UPU Index	Yes
Applicable Terms and Conditions	AVC / CMR conditions, Physical Distribution Conditions, FENEX
Liability for loss / damage	Maximum amount per kg in accordance with the applicable terms and conditions
Liability for delays	Liability is limited to maximum the transport price agreed upon. Damages shall only be paid if the Client satisfactorily demonstrates that the damage was caused by delays.

- q. The Buyer shall be responsible for the information submitted to Logistics about the delivery of the Products. Logistics shall never be liable for any kind of direct and indirect

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damage due to incorrect information, missing information or overdue information about the shipment of the Products.