



## Terms and conditions of sales, delivery and payment

of Max. Aarts B.V. hereinafter called 'supplier', domiciled in Enschede and registered at the *Kamer van Koophandel* (Chamber of Commerce) *Veluwe en Twente* with number 06079830.

### Section 1: Definitions

In these terms and conditions the following definitions apply:

- a. Client: the natural or legal body who commissioned the supplier to conduct any business or to perform any activities;
- b. Supplier: the natural or legal body who accepted the commission as mentioned in Section 1a, or who made a previous offer or proposal for a possible commission;

### Section 2: General concepts

2.1 These terms and conditions apply to the establishment, content and fulfilment of all agreements which are concluded between the client and the supplier.

2.2 The general terms and conditions of purchasing of the client apply only when it is stated explicitly and in writing that they will apply to the agreement between the parties with the exclusion of the underlying terms and conditions of delivery.

### Section 3: Offers and tenders

3.1 The production of a calculation, estimate, cost estimation or a similar communication which might also be called an offer does not oblige the supplier to enter into an agreement with the client.

3.2 Any offer made by the supplier is free of engagement and may only be accepted without any changes. An offer is considered to be rejected in any event if it has not been accepted within one month. An 'offer' means a proposal presented to the client to enter into an agreement, which is formulated in such a way that after it has been accepted an agreement automatically exists.

### Section 4: Cancellation

4.1 The client is entitled to cancel an agreement before the supplier has started to carry it out on condition that he compensate the damage thus created for the supplier. The damage includes the supplier's losses and the loss of income and the costs already made by the supplier in the preparation, including reserved production capacity, purchased materials, services which might be called upon and storage.

4.2 It is not possible to cancel agreements for the production of goods delivered on demand.

### Section 5: Price

5.1 All prices are stated exclusive of *BTW* (VAT) and other governmental charges and are valid ex-factory, unless otherwise agreed.

5.2 In case of mixed offers there is no obligation to deliver a part of the total product for the amount mentioned in the offer for that part or for an amount proportional to the total price stated.

### Section 6: Price changes

6.1 The supplier is entitled to raise the prices offered or agreed should one or more of the following circumstances occur after the offer was made or after the agreement was concluded: an increase in the cost of materials, semimanufactured products, or services needed for the fulfilment of the agreement, an increase in shipping costs, wages, employer's expenses or social securities, or in charges relating to other terms of employment, the introduction of or increase in government taxes on raw materials, energy or residues, a substantial change in exchange rates or circumstances which are generally comparable.

6.2 Text which is especially hard to work with, indistinct or vague copy, sketches, drawings or models, inferior data carriers, inferior computer software or data files, inferior methods of delivery of materials or products which are to be delivered by the client, and all similar deliveries done by the client which force the supplier to additional activities or costs exceeding those which in all fairness could be expected when this agreement was entered upon, are reason for increasing the agreed price. Exceptional or truly unforeseeable problems in the production process resulting from the materials and products to be processed are also grounds for an increase in the agreed price.

6.3 The supplier is entitled to increase the price as agreed should the client make a change in the originally agreed specifications, including author's corrections or modified instructions after receipt of the confirmation of the order, working plans and working models and typesetting proofs, printing proofs or other kinds of proofs. The supplier will co-operate with the alterations within reason should the activities required from him not be substantially different from those originally agreed upon.

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## Section 7: Terms of payment

7.1 Unless otherwise agreed, the client must pay the price and any other amounts due under the agreement within 30 days from the date of invoice, without any right to discount, settlement or postponement. If the client is a natural person who does not practise a profession or have a business, payment must be made in cash upon delivery. Should the client not pay in time as aforementioned, the client will be considered to be in default without the need for proof of default by supplier.

7.2 In the case of an agreement for delivery in stages, upon delivery of the first part the supplier is entitled to ask for payment for the part delivered, as well as for the costs of typesetting, lithos, proofs and equipment, such as stereotype cylinders and punching knives, for the total delivery in accordance with the agreement

7.3 The client must always, and notwithstanding the agreed terms of payment, provide security at the first request of the supplier for the payment of the costs following the agreement. The security offered must be such that the claim and possible accompanying interest and charges are reasonably covered so that the supplier will be able to recover any claims without any difficulty. A security which has become insufficient must be made sufficient by the client, without the need for proof of default by the supplier.

7.4 Should the client not pay on time as mentioned in paragraph 1 of this section then, because of the delay in settlement of the amount, he will be obliged to pay the legal interest accruing on the amount from the date of invoice. The supplier is authorized to charge one twelfth of the annual interest for each and every month or part of a month in which the client has not met his obligations to pay.

7.5 Should the client not pay in time as mentioned in paragraph 1 of this section, the client will have to pay the amount due and the accrued interest and must also compensate fully for legal and non-legal expenses incurred by the supplier, such as legal collecting commissions and including expenses for lawyers, bailiffs and debt collection agencies. The non-legal expenses will be fixed at at least 15 percent of the total amount with a minimum of € 150,00.

## Section 8: Method of delivery; conditional ownership

8.1 Unless agreed otherwise the delivery will take place on the premises of the supplier.

8.2 The supplier is not obliged to deliver his products in stages unless it has been agreed upon in writing.

8.3 The client must co-operate fully in the delivery of the products as agreed with the supplier. The client will be in default without receiving a demand, if he does not collect the goods upon the first request of the supplier or, should it have been agreed that delivery would be at his address, if he refuses to take delivery of the goods or is not present during normal working hours so that normal delivery can take place.

8.4 Each delivery of goods from the supplier to the client will take place under conditional ownership until the client has met all the demands laid upon him in the agreement, including interest and expenses.

8.5 Should agreement have been made about the transport of the goods to be delivered, such transport will be for the client's account unless delivery free of charge has been agreed. The client's acceptance of the supplier's goods will be proof of the apparent good condition of the goods, unless the waybill or receipt shows otherwise.

8.6 The supplier is not responsible for the storage of the goods, unless explicitly agreed upon. Should the goods be stored it will be at the client's expense and risk.

## Section 9 : Term of delivery

9.1 The date of delivery given by supplier is no more than an indication, unless it is stated explicitly and in writing that the date is final. The supplier is only in default after the client has declared him to be so, even when there is an agreed final date.

9.2 The commitment of the supplier to the agreed final date will lapse if the client wants to make any changes in the product specification, or should the client fail to deliver, or have delivered by a third party assigned by the client, all the information, such as drawings, text, photographs, films etc., necessary to make the print design, within the term mentioned by the supplier, this also with due regard to the specifications in paragraph 2 section 6 or paragraph 1 section 12 of these conditions, unless the alteration is so minor or will cause so small a delay that the supplier is not reasonably forced to change the original time scheme of his production capacity.

9.3 During the execution of the agreement the client must do everything necessary or advisable within reason to facilitate delivery from the

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supplier on time, particularly such as answering the supplier's questions without delay and in consideration of the specifications in paragraph 1 section 12 and paragraphs 1 and 2 of section 17 of these terms and conditions of delivery.

9.4 Should the client fail to observe the specifications in the foregoing paragraph of this section and the specifications in paragraph 3 of section 7, the agreed final delivery date will no longer be binding and the client will be in default, without any need for a written declaration of default by the supplier. The supplier is allowed to postpone the fulfilment of the agreement, notwithstanding the rights he is legally entitled to, until the client has restored the default, after which the supplier will fulfil the agreement within a reasonable period of time.

### Section 10: Examination upon delivery

10.1 After delivery the client must check within good time whether the supplier has fulfilled the agreement satisfactorily and is also obliged to inform the supplier in writing at once should this not be so. The client must have made the examination and the relevant notification no later than 14 days after delivery.

10.2 The supplier is always entitled to substitute a defective product with a sound product unless the fault cannot be repaired.

10.3 The agreement will be considered to have been satisfactorily fulfilled should the client fail to make the examination or notification in time, as mentioned in paragraph 1 of this section.

10.4 The performance of the supplier will be considered to be satisfactory should the client have started using the product delivered or part of it, or have processed the product, or have delivered the product to a third party, or have made the third party use or process or deliver the product, unless the client has observed the specifications as mentioned in the first paragraph of this section.

### Section 11: Content and change of agreement

The client bears the risk of misunderstandings concerning the content and execution of the agreement should these misunderstandings originate from specifications which the supplier did not receive, or not rightly receive, or not receive in time, or received incomplete, or from other communications which were given orally by a person designated by the client or were communicated by any technical means such as telephone, fax or similar transmission media.

### Section 12: Typesetting proofs, printing proofs or other proofs.

12.1 The client is obliged to check thoroughly for any mistakes or deficiencies in the typesetting proofs, printing proofs or other proofs received from the supplier, whether at his own request or not, and to return them to the supplier in due time corrected or approved.

12.2 Approval of the proofs by the client is an acknowledgement that the work of the supplier preceding production of the proofs was carried out correctly.

12.3 The supplier is not responsible for any deviations, errors or omissions which were not seen in the proofs approved or corrected by the client.

12.4 Each proof made at the request of the client will be charged in addition to the price as agreed, unless it has been explicitly agreed that the costs of these proofs were included in the price.

### Section 13: Deviations

13.1 Deviations between on the one hand the work delivered and on the other hand the original design, drawing, copy or model or the typesetting proofs, printing proofs or other proofs, cannot be a reason for any rejection, discount, annulment of the agreement or compensation, should they be of minor importance.

13.2 In order to decide whether the deviations should be judged as being of minor importance in the product as a whole, a representative sample will be considered, unless the products are to be judged individually.

13.3 Deviations which, when all circumstances are considered, can be reasonably held to have no influence or only secondary influence on the product's practical value, will always be considered to be deviations of minor importance.

13.4 Delivery of 10% more or less than the quantity ordered is allowable. Larger or smaller quantities will be calculated against the price per unit, unless agreed otherwise.

13.5 As to the quality and gram-weight of paper and cardboard, variations are considered to be of minor importance if they follow the tolerance standards referred to in the General Conditions of Sales of the Dutch Society of Paper Wholersalers (*Vereniging van Papiergroothandelaren*). These conditions are available for perusal at the supplier's. The supplier will send a copy of these conditions to the client upon request at no extra charge.

13.6 Variations in other materials and semifinished products used by the supplier which

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are allowed according to the datasheets for delivery of these materials and semifinished products, are considered to be variations of minor importance. The relevant conditions are available for perusal at the supplier's. The supplier will send a copy of these datasheets to the client upon request at no extra charge.

#### **Section 14: Copyright etc.**

14.1 The client guarantees the supplier that the fulfilment of the agreement and in particular the reproduction and publication of material received from the client, such as copy, typesetting, models, drawings, photographs, lithos, films, bearers of information, computer software and data files will not infringe any rights which third parties might assert following the Dutch Copyright Act (*Auteurswet*) 1912 or any other national, supranational or international regulations in the field of copyright or industrial ownership or the law of tort. The client indemnifies the supplier in and out of law from any claims which third parties might put forward in accordance with the aforementioned law or set of regulations.

14.2 Should there arise or remain any doubt concerning the validity of any claim asserted by third parties as mentioned in paragraph 1 of this section, the supplier is authorized but not obliged to postpone the fulfilment of the agreement until it has been lawfully and irrevocably established that the supplier does not infringe any of these rights by fulfilment of the agreement. The supplier will then execute the order within a reasonable period of time.

14.3 Unless explicitly agreed otherwise in writing, the supplier will always be entitled to the copyright that might arise on products made during the fulfilment of the agreement such as copy, typesetting, drafts, models, working drawings and detailed drawings, bearers of information, computer software, data files, photographs, lithos, movies and similar means of production and devices, even when the specific activities are mentioned in the offer or the invoice as being separate issues.

14.4 The products delivered or to be delivered by the supplier according to his own design such as copy, typesetting, drafts, models, working drawings and detailed drawings, bearers of information, computer software, data files, photographs, lithos, films and similar means of production and devices, or any part of it relating to the production of this design, may not be reproduced within the framework of any production process without his written

permission, even if the supplier has no copyright or any other legal protection on the design.

14.5 After delivery, the client acquires the non-exclusive right to use the products made by the supplier in accordance with the agreement in the meaning of the Dutch Copyright Act (*Auteurswet*) 1912 or of products in the meaning of paragraph 4 of this section. The aforementioned right to use the products is limited to the right of normal use of the delivered goods and specifically does not include any duplication of the goods as part of any production process.

#### **Section 15 : Ownership of means of production etc.**

15.1 All products made by the supplier such as a means of production, semifinished products and tools and in particular typesettings, drafts, models, working drawings and detailed drawings, bearers of information, computer software, data files, photographs, printing forms, punch knives and punch forms, embossing forms and peripheral equipment, remain the property of the supplier, even when they are mentioned as separate items in the offer, tender or invoice.

15.2 The supplier is not obliged to hand over the products as mentioned in paragraph 1 to the client.

15.3 The supplier is not obliged to keep the products as mentioned in the first paragraph of this section for the client. Should supplier and client agree that these products will be kept by the supplier, this will be done at the client's risk, for a period of a year at most and without the supplier's guarantee that the product can be used repeatedly.

#### **Section 16 : Property of client, right of distraint**

16.1 The supplier will take good care of the products handed over to him as part of the fulfilment of the agreement.

16.2 Without prejudice to the provisions in the preceding paragraph of this section, the client will carry all the risks during the keeping of the goods as mentioned in paragraph 1. If so desired, the client must take out an insurance policy for this risk.

16.3 The client is obliged to make duplicates of the copy, drawings, designs, photographs or bearers of information before they are handed over to the supplier. The client must keep the copies secure in case the products supplied are lost while they are in the supplier's keeping or are damaged and cannot be used. Should this happen the client must provide the supplier upon

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request with a new copy, with compensation for the costs of the material.

16.4 The client gives the supplier the right of distraint on all things which will be in the supplier's control under the terms of the agreement, to provide security for all things that the client might own the supplier no matter in what quality or in which account, non claimable and conditional debts included.

### **Section 17: Materials and products delivered by the client**

17.1. When the client has an agreement with the supplier to deliver material or products for printing or for processing, the client must ensure that they are delivered correctly and on time so that production can take place according to plan. The client will follow the instructions of the supplier for this purpose.

17.2 The client must provide enough material or products for the final output, and provide a reasonable quantity for proofs, trimming areas, etc. The client will ask for a specification from the supplier. The client guarantees that the supplier will receive a sufficient quantity. Confirmation of receipt of the material or products by the supplier does not automatically mean that a sufficient quantity or the quantity mentioned on the transportation documents has been received.

17.3 The supplier is not obliged to check the products he receives from the client prior to the printing or production process to see whether they are suitable for purpose.

17.4 The supplier cannot be held responsible for failing to fulfil the agreement should the reason for such failure be an extraordinary one or due to within reason unforeseeable processing difficulties for the supplier caused by the state of the materials or products delivered by the client, nor can the supplier be held responsible for such failure should it be caused by variations between the sample originally shown to the supplier and the material or products which were delivered later by the client.

17.5 The supplier cannot guarantee qualities such as durability, sticking, gloss, colour, light fastness, colour fastness or wear-resistance should the client have failed to give any information about the properties and nature of the materials and/or products delivered no later than when the agreement was entered upon and should he have failed to give reliable information about the pre-treatments and surface treatments applied.

17.6 Unless explicitly stated otherwise, the supplier cannot be held responsible for possible

peeling, sticking, soiling, changing gloss or colour, or for damage to materials and products received from the client for printing or processing should these materials and products have had a pre-treatment such as lacquer, varnish or anti-soil powder.

17.7 Before any offer is made the client must inform the supplier about specific difficulties or potential health risks during the printing process or processing of the materials and products he delivered.

17.8 The supplier is entitled to have the residues such as cutting waste from the materials and products delivered by the client at his disposal as if they were his own. The client is obliged to collect unused materials and products or the aforementioned residues when so requested by the supplier.

### **Section 18: Circumstances beyond control**

'Circumstances beyond control' here means a failing on the part of the supplier which is not his fault and which prevents the fulfilment of the agreement either temporarily or permanently, as well as insofar not here included war, risk of war, revolt, machine failure and other accidents, natural disaster, strike, workers' lock-out, transport troubles, non-delivery of essential materials and semifinished products by third parties, fire and other serious troubles in the supplier's company or that of his suppliers. These circumstances will be regarded as not being the fault of the supplier and do not give the client entitlement to annulment of the agreement or compensation.

### **Section 19: Liability**

19.1 The liability of the supplier on account of the agreement with the client is limited to such an amount which is in all reasonableness and fairness comparable with the price agreed.

19.2 The supplier is not liable for any damage which might develop after or as a result of the client's use of the products after delivery, or their processing, delivery to third parties or making third parties use the products, process them or have them delivered to third parties.

19.3 Furthermore, the supplier is not liable for any damage in the form of loss of turnover or reduced goodwill in the client's business or profession.

19.4 Furthermore, the supplier is not liable for any damage to material or products received from the client for printing or for processing should the client have failed to give any information about the properties and nature of

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the materials and/or products he delivered no later than when the agreement was entered upon and should he have failed to give reliable information about the pre-treatments and surface treatments applied.

19.5 Should the supplier be held liable by a third party for any damage for which he cannot be held responsible due to the agreement with the client or due to these terms and conditions of delivery, the client will indemnify him completely from any liability and compensate him fully for anything he may have to pay to the third party by law.

#### **Section 20: Dispute**

Any dispute, including disputes considered to be disputes only by one party, which might arise between parties as a result of the agreement to which the present terms and condition apply entirely or in part, or as a result of other agreements, which might result from these agreements, will be submitted exclusively to the judgement of the *Arrondissementsrechtbank* (County Court) in Almelo, without any prejudice to the supplier's right to summon the client before the judge in his place of residence.

#### **Section 21: Applicable law**

Dutch law will apply exclusively to the legal relationship between client and supplier.  
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NB: This English version is a **translation** of the Dutch Verkoop-, leverings- en betalingsvoorwaarden. In the event of any discrepancy between the two, the Dutch version will **prevail**.

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