

# General Terms and Conditions of Kumina bv

Version 25. October 2010

## **Article 1 - General**

1. These general terms and conditions apply to all tenders, offers and agreements between Kumina bv, hereinafter referred to as: "Kumina", and any Client with regard to which Kumina has declared these terms and conditions applicable, insofar as the parties have not explicitly deviated from these conditions in writing.
2. These general terms and conditions also apply to agreements with Kumina, for the execution of which Kumina must engage third parties.
3. These general terms and conditions have further been formulated for staff of Kumina and its board of directors.
4. The applicability of any purchase conditions or other terms and conditions of the Client is hereby explicitly excluded.
5. If, at any one time, one or more provisions in these general terms and conditions are partly or fully null and void or partly or fully voided, the other provisions of these general terms and conditions remain fully applicable. In that case, Kumina and the Client shall consult in order to agree upon new provisions to replace the null and void or voided provisions, during which the objective and purport of the original provisions are duly observed, if and insofar as possible.
6. In the event of uncertainty regarding the interpretation of one or more provisions of these general terms and conditions, the interpretation must be 'in the spirit' of its provisions.
7. In the event of a situation arising not provided for by these general terms and conditions, the situation must be assessed 'in the spirit' of these general terms and conditions.
8. The fact that Kumina does not require strict compliance with these terms and conditions at all times, does not automatically mean that the provisions detailed therein no longer apply, or that Kumina would lose the right to require strict compliance with these terms and conditions in other cases.

## **Article 2 - Offers and quotations**

1. All offers and quotations by Kumina are free of obligation, unless the offer states a term for acceptance. If no acceptance term is set and the product to which the offer or quotation applies is no longer available, no rights can be derived from the offer or quotation in any way.
2. Kumina is not obliged to abide by its offer or quotation, if it is reasonably understandable for the Client that the offer or quotation, or parts thereof, contain an apparent error or mistake.
3. The prices detailed in an offer or quotation do not include VAT and other government levies, nor do they include any costs to be incurred within the framework of the agreement, including travel and accommodation expenses, shipping costs and administration costs, unless stated otherwise.
4. If the acceptance (whether or not on a matter detail) deviates from the offer detailed in the offer or quotation, Kumina shall not be bound to that. The agreement shall not be

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concluded in accordance with this deviating acceptance, unless Kumina indicates otherwise.

5. A compound quotation does not oblige Kumina to execute part of the instruction at a proportional part of the quoted price. Quotations or offers do not automatically apply to future orders.

**Article 3 - Contract term; execution terms, transfer of risks, implementation and changes with regard to the agreement; price increases**

1. The agreement between Kumina and the Client is concluded for an indefinite period of time, unless the nature of the agreement stipulates otherwise or if the parties explicitly agree otherwise in writing.
2. If a term is agreed or stipulated with regard to the execution of certain work or the delivery of certain items, this term shall not serve as a strict deadline. Consequently, if a term is exceeded, the Client must send Kumina a written notice of default. In that case, Kumina must be offered a reasonable term in order to execute the agreement at a later date.
3. Kumina shall execute the agreement to the best of its knowledge and ability and in accordance with high standards. All this on the basis of the latest scientific and technical knowledge at that time.
4. Kumina is entitled to have certain work carried out by third parties. The applicability of articles 7:404, 7:407 paragraph 2 and 7:409 of the Netherlands Civil Code is explicitly excluded.
5. In the event that work is carried out by Kumina or by third parties engaged by Kumina on site the location of the Client, or on site a location appointed by the Client, the Client shall make available any facilities reasonably required by those members of staff, free of charge.
6. Delivery shall be ex works from the premises of Kumina. The Client is obliged to accept the items from the moment they are made available to him. If the Client refuses to take possession or is negligent in providing information or instructions required for the delivery, Kumina shall be entitled to store the items at the expense and risk of the Client. The risk of loss, damage or depreciation is transferred to the Client from the time the items have been made available to him.
7. Kumina is entitled to execute the agreement in different phases and, consequently, invoice any completed parts separately.
8. If the agreement is executed in different phases, Kumina shall be entitled to suspend the execution of those parts which are part of the following phase, until the Client has approved the results of the preceding phase in writing.
9. The Client ensures that all information of which Kumina indicates that it is required and/or with regard to which the Client should reasonable understand that it is required for the execution of the agreement shall be made available to Kumina in time. If the information required for the execution of the agreement has not been made available to Kumina in time, Kumina shall be entitled to suspend the execution of the agreement and/or to charge the Client any additional costs arising from the delay in accordance with the then applicable prices. The execution term does not commence until the Client has made the information available to Kumina. Kumina shall not be liable for damage, regardless of the nature thereof, due to Kumina acting upon incorrect and/or incomplete information made available by the Client.
10. If during the execution of the agreement it appears that a supplement or change is

needed to ensure an adequate execution thereof, the parties shall enter into mutual and timely consultations in order to adjust the agreement. Changing the nature, scope or contents of the agreement, whether or not at the request or indication of the Client, the competent authorities, etcetera, causing the agreement to change in terms of quality and/or quantity, may affect the initial agreement. Consequently, the initially agreed sum may be increased or reduced. If and insofar as possible, Kumina shall quote any prices in advance. Changing the agreement can furthermore change the initially stated term of execution. The Client accepts the possibility of changes to the agreement, including those with regard to price and term of the execution.

11. If the agreement is changed, including any supplements, Kumina shall be entitled to execute this subject to approval by the person authorised to that effect within the organisation of Kumina and the Client has agreed to the price quoted for the execution and the changed conditions, including the time at which the execution thereof is set to be effected. Kumina shall not be in breach of contract when the changed agreement is not executed or not executed instantly and does not give rise to the Client to terminate or cancel the agreement.
12. Kumina, without being in default, is entitled to reject requests for changing the agreement, if this request potentially affects e.g. the work to be carried out or the items to be delivered within that framework in terms of quality and/or quantity.
13. Should the Client fail to properly fulfil his obligations towards Kumina, the Client shall be liable for all direct and indirect damage and losses incurred by Kumina.
14. If Kumina has agreed a fixed fee or price with the Client, Kumina is nevertheless entitled to increase this fee or price at all times, without the Client being entitled to cancel the agreement on that ground, provided the increase ensues from a right or obligation pursuant to the laws and regulations, is caused by a rise in prices for raw materials, wages etcetera, or is due to any other reason which could not reasonably have been foreseen at the time the agreement was concluded.
15. If the price increase is more than 10% due to a reason other than a change in the agreement and is effected within three months of the agreement having been concluded, only the Client invoking title 5, section 3 of Book 6 of the Netherlands Civil Code shall be entitled to terminate the agreement by means of a written statement, unless Kumina:
  1. is still prepared to execute the agreement on the basis of the initial agreement;
  2. if the price increase ensues from a legal right or obligation;
  3. if it has been stipulated that delivery shall be effected more than three months after the agreement has been concluded;
  4. or, in the event of the delivery of an item, it has been stipulated that delivery shall be effected more than three months after the purchase.

#### **Article 4 - Suspension, cancellation and premature termination of the agreement**

1. Kumina shall be entitled to suspend the fulfilment of the obligations or to cancel the agreement if the Client fails to fulfil his obligations by virtue of the agreement, or fails to do so fully or in time, if information obtained by Kumina after concluding the agreement give valid reasons to believe that the Client shall not fulfil his obligations, if the Client, upon concluding the agreement, has been asked to provide certainty in relation to his fulfilment of the obligations by virtue of the agreement and fails to produce this, or if, due to the delay on behalf of the Client, Kumina cannot reasonably be expected to execute the agreement on the basis of the initially agreed conditions.

2. Kumina shall furthermore be entitled to cancel the agreement in the event of circumstances which prevent execution of the agreement, or any other circumstances as a result of which Kumina cannot reasonably be expected to execute the agreement without changes being made to it.
3. Any claims of Kumina against the Client become immediately due and payable upon cancellation of the agreement. Kumina suspending the fulfilment of the obligations does not affect its statutory rights or any entitlements stipulated by the agreement.
4. If Kumina decides to suspend or cancel the agreement, it is not in any way obliged to pay compensation of damage or costs incurred as a result thereof.
5. If the cancellation can be attributed to the Client, Kumina shall be entitled to compensation of damage, including any direct and indirect costs incurred as a result thereof.
6. If the Client fails to fulfil his obligations arising from the agreement and this non-performance justifies cancellation, Kumina shall be entitled to cancel the agreement with immediate effect, without any obligation on its behalf to pay any compensation or indemnify, whereas the Client, by reason of breach of contract, is obliged to pay compensation or indemnify.
7. If the agreement is terminated by Kumina prematurely, Kumina, in consultation with the Client, shall arrange for any outstanding work to be transferred to third parties, unless the termination can be attributed to the Client. If Kumina incurs additional costs as a result of any work being transferred, the Client shall be charged for these costs accordingly. The Client is obliged to settle these costs within the applicable term, unless indicated otherwise by Kumina.
8. In the event of liquidation, (filing for) moratorium, bankruptcy or attachment - if and insofar the attachment has not been removed within three months - against the Client, or debt rescheduling or any other circumstance as a result of which the Client can no longer freely use his assets, Kumina shall be free to terminate the agreement with immediate effect, without any obligation on its behalf to pay any compensation or indemnify. In that case, any claims Kumina has against the Client shall become immediately due and payable.
9. In the event that the Client partly or fully cancels a confirmed order, he shall be charged in full for any work already carried out plus any items ordered or processes completed in that respect, increased by the applicable transport, discharge or delivery costs thereof, as well as any working hours reserved for the execution of the agreement.

### **Article 5 - Force majeure**

1. Kumina shall not be obliged to fulfil any obligations towards the Client, if Kumina is impeded to do so as a result of a circumstance which cannot be attributed to Kumina, nor if Kumina is accountable for it by law, juristic act or generally accepted standards.
2. In these general terms and conditions, force majeure, in addition to the explanations in existing (case) law, is understood to mean all external causes, whether or not anticipated, beyond the control of Kumina, as a result of which Kumina is unable to fulfil its obligations. This includes strikes within the company of Kumina or third parties. Kumina is furthermore entitled to claim force majeure if the circumstance that prevents the (continued) execution of the agreement arises after Kumina was to have fulfilled its obligation.
3. During the time that the force majeure period continues, Kumina shall be entitled to suspend any obligations by virtue of the agreement. If this period exceeds a term of two months, either party is entitled to terminate the agreement without further

obligation to compensate the other party for any damage or losses.

4. Insofar as Kumina, at the time the force majeure commences, has meanwhile partly fulfilled its obligations by virtue of the agreement, or shall be able to do so, and the fulfilled part and/or the part to be fulfilled represents independent value, Kumina is entitled to separately invoice the part that has already been fulfilled and/or is yet to be fulfilled. The Client shall be obliged to pay this invoice on the basis of an assumed separate agreement.

#### **Article 6 - Payment and collection charges**

1. Kumina sends its invoices by email, unless otherwise agreed with the Client.
2. Payment must be made within 30 days of the invoice date at all times, in a manner to be stipulated by Kumina and in the currency of the invoice, unless indicated otherwise by Kumina in writing. Kumina is entitled to invoice on a periodic basis.
3. If the Client fails to pay an invoice in time, he shall be in default by operation of law. In that case, the Client owes interest at 1% a month, unless the statutory interest rate is higher, in which case the statutory interest rate applies. The interest on the amount payable is calculated from the moment the Client is in default until the moment that the amount owed has been paid in full.
4. Kumina is entitled to apply any payments made by the Client to costs incurred first, subsequently to any interest due and finally to the principal sum and accrued interest. Kumina, without being in default, can refuse an offer for payment if the Client sets a different sequence for the allocation of the payment. Kumina can refuse full settlement of the principal sum, if this does not include any interest due, accrued interest and collection costs due.
5. The Client shall never be entitled to set off any amounts payable to Kumina. Objections to the amount of the invoice do not suspend the obligation to pay. Nor shall the Client failing to invoke section 6.5.3 (articles 231 to 247 of Book 6 of the Netherlands Civil Code) be entitled to suspend payment of an invoice for any other reason.
6. In the event that the Client is in default or fails to (timely) fulfil his obligations, all extrajudicial costs reasonably incurred to collect payment shall be at the expense of the Client. The extrajudicial costs shall be calculated on the basis of what is customary in the Dutch collection sector. Currently, that is the calculation method according to the Voorwerk II Report. If, however, Kumina has incurred higher costs that were reasonably necessary to collect payment, the actually costs incurred qualify for compensation. Any judicial and enforcement costs shall also be recovered from the Client. The Client is furthermore obliged to pay interest on any collection costs incurred.

#### **Article 7 - Retention of title**

1. Items supplied by Kumina within the framework of the agreement remain the property of Kumina until the Client has properly fulfilled all his obligations under the agreement(s) entered into with Kumina.
2. Items supplied by Kumina which, according to paragraph 1, are subject to retention of title, may not be sold on and never used as an instrument of payment. The Client is not entitled to pledge items supplied under retention of title or to encumber these in any other way.
3. The Client must make every effort which may reasonably be expected from him to protect the proprietary rights of Kumina, at all times. If a third party attaches items supplied under retention of title or if it wishes to establish a right or lay claim to that, the

Client is obliged to forthwith notify Kumina thereof. The Client is furthermore obliged to sufficiently insure items supplied under retention of title and to keep these insured against damage caused by transport, fire, explosion and water as well as theft and to submit the policy for this insurance for inspection Kumina on first demand. In the event of any payments made by virtue of this insurance, Kumina shall be entitled to these funds. To the extent necessary, the Client is committed to rendering his assistance to Kumina to all that is or appears to be necessary or desired within that framework.

4. In the event that Kumina wishes to exercise its proprietary rights, the Client hereby gives his unconditional and irrevocable permission to Kumina or any third party to be appointed by Kumina, to access any location as to where the property of Kumina may be and to retrieve those items.

### **Article 8 - Warranties, inspection and claims, time limit**

1. The items to be supplied by Kumina meet the usual requirements and standards which can reasonably be expected at the time of delivery in terms of their intended normal use in the Netherlands. The warranty referred to in this article applies to items for intended use within the Netherlands. In the event of use outside the Netherlands, the Client himself must verify whether the use thereof is suitable within that place and meet the conditions set to it. In that case, Kumina can stipulate different warranties and other conditions with regard to the items to be supplied or work to be carried out.
2. The warranty referred to in paragraph 1 of this article covers a period of 6 months, unless stipulated otherwise by the nature of the items supplied or agreed otherwise by the parties. If the warranty provided by Kumina applies to items manufactured by a third party, the warranty is limited to the warranty provided by the manufacturer of the items, unless stated otherwise.
3. Any form of warranty shall lapse due to faults caused by or arising from improper or injudicious use thereof, use after the expiry date, incorrect storage or maintenance thereof by the Client and/or third parties without the written consent of Kumina, the Client or third parties making changes to the items and/or attempts to do so, attaching elements which should not be attached to it or processing and/or handling the items in any way other than prescribed. Nor can the Client claim under the warranty provisions if the fault is due to or the result of circumstances which are beyond the control of Kumina, including weather conditions (such as, but not limited to, extreme rainfall or temperatures) etcetera.
4. The Client is obliged to inspect the items supplied (or arrange for this to be done) immediately after the items are made available to him and/or the relevant work has been completed. As part thereof, the Client must inspect whether the quality and/or quantity of the items correspond to the instruction and whether they meet the requirements which the parties have agreed in that respect. Any visual defects must be reported to Kumina in writing, within seven days of delivery. Any hidden defects must be reported to Kumina immediately, in writing, yet in no case later than fourteen days after discovery thereof. The report must contain a detailed description of the defect, enabling Kumina to take adequate action. The Client must enable Kumina to investigate any complaint (or to have this investigated).
5. A prompt claim by the Client does not suspend his obligation to pay. In that case, the Client continues to be obliged to accept and pay any items ordered and to abide to that which he has instructed Kumina.
6. If a fault is reported after the agreed period, the Client is no longer entitled to repair, replacement or indemnification.
7. If it has been confirmed that an item is faulty and the subsequent claim was submitted in time, Kumina, at its discretion, shall either replace, arrange the repair thereof or

reimburse the faulty item within a reasonable term of the item having been returned and received and/or, if returning the item is not reasonably possible, after written notification of the fault by the Client. In the event of replacement, the Client is obliged to return the replaced item to Kumina and hand over ownership to Kumina, unless Kumina instructs otherwise.

8. Any costs incurred by Kumina as a result of a complaint which is subsequently declared unfounded, including any inspection costs, shall be at the full expense of the Client.
9. Following expiry of the warranty period, all costs for the repair or replacement, including administration costs, shipping costs and call-out charges, shall be charged to the Client.
10. In deviation of the statutory time limits, the time limit for all claims and defences against Kumina and any third party engaged by Kumina in the execution of an agreement, amounts to one year.

### **Article 9 - Liability**

1. If Kumina is held liable, this liability shall be limited to that stipulated by these provisions.
2. Kumina shall not be liable for damage, regardless of the nature thereof, due to Kumina acting upon incorrect and/or incomplete information made available on behalf of or by the Client.
3. If Kumina is liable for any damage, the liability of Kumina shall be limited to a maximum of twice the invoice value, or at least to that part of the order which the liability relates to.
4. The liability of Kumina shall in any case be limited to the sum paid by its insurer, at all times.
5. Kumina shall be liable for direct damage only.
6. Direct damage is limited to the reasonable costs to determine the cause and scope of the damage, insofar as the assessment relates to damage within the meaning of these terms and conditions, any reasonable costs incurred to ensure the substandard performance of Kumina conforms to the agreement, insofar as these can be attributed to Kumina and reasonable costs incurred to prevent or limit any damage, insofar as Kumina is able to demonstrate that these costs have led to a limitation of the direct damage, as referred to in these general terms and conditions. Kumina shall never be liable for indirect damage, including consequential damage, lost profits, missed savings and losses due to business interruptions.
7. The restrictions detailed in this article with regard to liability do not apply if the damage can be attributed to intent or gross negligence on the part of Kumina or its managerial subordinates.

### **Article 10 - Indemnification**

The Client indemnifies Kumina against any claims of third parties who incur damage in relation to the execution of the agreement and the cause of which damage is attributable to parties other than Kumina. If Kumina is sued by third parties on that account, the Client shall be obliged to assist Kumina both in and out of court and to promptly do all that which can be expected from him. In the event that the Client fails to take adequate measures, Kumina, without further notice of default being required, shall be entitled to take these measures instead. All costs and damage sustained by Kumina and third parties shall be at the full expense and risk of the Client.

### ***Article 11 - Intellectual property***

Kumina reserves the rights and powers it is entitled to by virtue of the Copyright Act and other intellectual legislation. Kumina is entitled to use the knowledge it has gained during the execution of an agreement for other purposes too, insofar as it does not disclose any strictly confidential information of the Client to third parties.

### ***Article 12 - Applicable law and disputes***

1. All legal relationships to which Kumina is party are governed by Dutch Law, even if an engagement is wholly or partly executed abroad or if the relevant party to the legal relationship resides abroad. The applicability of the Vienna Sales Convention is excluded.
2. The District Court in the registered place of business of Kumina has exclusive jurisdiction to hear all disputes, unless imperatively prescribed otherwise by law. Kumina nevertheless has the right to submit the dispute to the court which, according to the law, has jurisdiction.
3. The parties shall only appeal to the courts once they have made every effort to resolve the dispute by mutual consultation.

### ***Article 13 - Source and change of conditions***

1. These conditions have been filed with the Chamber of Commerce in the province of Noord-Brabant.
2. The most recently filed version or the version that applied when the legal relationship with Kumina was formed shall apply.
3. The Dutch wording of these general terms and conditions shall always be decisive in the interpretation of the text.