



# GENERAL CONDITIONS OF SALE AND DELIVERY

General conditions of sale and delivery of the private company with limited liability Van Gestel B.V., with its registered office in Apeldoorn, and the private company with limited liability KAJA Horeca Interieur B.V., with its registered office in Rijssen and the businesses affiliated with the companies referred to, to the extent that these companies have declared the present Conditions to be applicable. The general conditions of sale and delivery were filed with the Chamber of Commerce of Veluwe and Twente on 17 March 2006 for Van Gestel B.V. under registration number 08064439 and for KAJA Horeca Interieur B.V. under registration number 08116214 and entered into effect on that date.

## Article 1. Applicability of these Conditions.

These Conditions are applicable to every offer and every contract between Van Gestel B.V. and/or KAJA Horeca Interieur BV., as referred to above, as well as the affiliated companies referred to, hereinafter referred to as: Seller and Buyer, upon which Seller has declared these conditions to be applicable to the extent that from these Conditions the parties hereto have not expressly deviated in writing. Deviations shall only be applicable for those contracts to which they explicitly relate

## Article 2. Quotations.

The quotations made by Seller are without obligations, unless they contain a term for acceptance. If a quotation contains an offer without obligations and this is accepted by Buyer, Seller shall have the right to withdraw the offer within two working days after receipt of the acceptance.

## Article 3. Contract

Oral commitments by and arrangements with subordinates of Seller, to the extent that these persons have no power of attorney, shall not bind Seller, except after and to the extent that those commitments and arrangements have been confirmed by Seller in writing.

The content of official lists, folders, printed matter, etc., of Seller shall not bind Seller, unless explicit reference is made to such content in the contract.

## Article 4. Price/Price increase..

All listed prices are exclusive of Dutch VAT, packaging, packaging costs, disposal levy and other levies imposed by the authorities, unless stated otherwise.

Each new price quoted in official lists of Seller shall render the foregoing inoperative.

If Seller agrees a certain price with Buyer, Seller shall nevertheless be entitled to raise the price: Seller may charge the price in effect upon delivery in accordance with its price list in effect at that time. If the price increase exceeds 10%, Buyer shall have the right to dissolve the contract by means of a written notice. The dissolution must take place immediately after Buyer has become aware of the price increase. Buyer shall not have this right to dissolve the contract if the price increase results from an increase in freight rates or customs tariffs or if the price is raised pursuant to law.

If Seller is obliged in accordance with the terms of the contract to install the products sold and to be delivered by it, the installation costs must be paid in advance. If the installation costs cannot be determined in advanced, Seller shall have the right to charge an advance payment to be calculated in a reasonable manner, which amount must be paid prior to the commencement of the installation activities. Seller has the right to outsource installation activities to an installer; Seller shall limit its activities to placing the products.

## Article 5. Full and partial delivery and delivery period

Unless agreed otherwise in writing, delivery shall take place ex distribution centre of Seller. Goods shall be transported at the expense and risk of Buyer, who must arrange for sufficient insurance coverage. Seller does not offer vertical transport; this must be arranged by principal himself.

An agreed upon delivery period is not a strict deadline, unless expressly agreed otherwise in writing. If delivery is overdue, Buyer must consequently give Seller written notice of default. Seller is permitted to deliver sold goods in instalments. This does not apply if a partial delivery has no independent value. If the goods are delivered in instalments,

Seller shall be authorised to invoice for each instalment.

The additional costs which Seller incurs for arranging partial deliveries upon Buyer's request and which were not agreed upon conclusion of the order, shall entirely be at Buyer's expense.

If the goods are not picked up by Buyer after expiry of the delivery period, they shall be stored and shall be available to him at his expense and risk.

## Article 6. Assembly/placing.

If Seller has undertaken to assemble the goods, all demolition work, brickwork, plasterwork, concrete work, carpentry, paintwork, central heating system work and plumbing work, activities relating to electricity and gas supply and similar activities, as well as suitable scaffolding shall then continue to be at the expense and risk of Buyer.

Buyer is himself responsible for applying for any permits and the corresponding costs.

Each offer, unless expressly stated otherwise, is based on execution under normal conditions and during normal working hours.

If the delivery to or near the place of delivery requires extra working hours due to the lack of pavement or a paved road, or due to other circumstances, Seller shall be entitled to charge for these hours separately in a reasonable manner, as well as extra transport and postage costs. The term 'other circumstances' as referred to above shall also be understood to mean the inability to take delivery of goods for cash (provided such has been agreed), or other reasons which in fact prevent delivery, such as the absence of the customer or his representative on site.

Applying fastening devices, adjusting laths and other devices, which are necessary for assembling goods and which have not expressly been described in the offer shall be at the expense and risk of Buyer. Buyer shall ensure at his own expense and risk that:

a.the personnel of Seller, once they have arrived at the construction site, can commence and continue without interruption their activities under normal conditions and unimpeded by obstacles in accordance with an agreed upon installation sequence as well as furthermore being given the opportunity at all times to execute their activities during normal working hours and moreover beyond normal working hours, if Seller deems it necessary to set the starting and/or finishing times of the activities beyond normal working hours and he has informed Buyer of such in a timely manner. If the assembly or installation cannot be arranged due to causes beyond the fault of Seller and cannot take place without interruption and/or is delayed in another manner, Seller shall be entitled to charge principal the additional costs arising

therefrom at the rate in effect at that moment. The provisions under a. are also applicable if we are unable to commence our activities on the agreed upon moment as a result of postponement on the part of principal so that the team of workmen hired by us can no longer be deployed elsewhere. All possible, unforeseen costs, including costs arising from the fact that the assembly could not take place during regular working hours, as well as travel, accommodation and transport costs that were not included in the price, are at the expense of principal.

b.the structure is accessible to lorries from all sides via a paved or otherwise surfaced road;

c.suitable accommodations and facilities required by law for the personnel are present;

d.the dry, lockable storage places required on site for material, tools and other goods are present;

e.possibilities for the electrical connection of 220/380 V and of sufficient power within a distance of 1 metre to the work area, as well as sufficient water and lighting are made available;

f.all necessary, general safety features and other preventative measures have been taken and are complied with.

Principal must, when the activities are finished, be present and inspect whether the activities have been carried out properly. Complaints after

the assembly personnel have departed regarding the execution of the work or the duration thereof shall not be handled, unless principal demonstrates that he could not reasonably have discovered the relevant deficiencies at the time the activities had been completed. In that case, the parties hereto must act as set out in Article 8 of these Conditions

## Article 7. Termination of the Contract.

The claims of Seller vis-à-vis Buyer are immediately due and payable in, among other things, the following cases:

- if after conclusion of the Contract circumstances are brought to the attention of Seller that give Seller good grounds for fearing that Buyer shall not fulfil his obligations;
- if Seller has requested of Buyer upon conclusion of the Contract to provide security for fulfilment and this security is not forthcoming or is insufficient;
- in the event Buyer becomes bankrupt, applies for a moratorium or is placed under guardianship and if Buyer deceases, enters into liquidation or is dissolved in whole or in part;
- if Buyer does not comply with his obligations arising from the Contract vis-à-vis Seller and is consequently in default.

In the cases referred to, but not limited hereto, Seller is entitled to suspend the further execution of the Contract or to proceed with the dissolution of the Contract, the foregoing under the obligation of Buyer to compensate the resulting loss incurred by Seller and without prejudice to the rights to which Seller is otherwise entitled. Buyer and Seller have hereby already agreed that the minimum loss, which Seller has arising from this Article, shall equal the amount of the deposits that have previously been made.



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If circumstances occur relating to persons and/or material whose services Seller engages or which Seller uses for the execution of the Contract or is in the habit of engaging or using, which are of such a nature that the execution of the Contract becomes impossible or inconvenient and/or disproportionately costly to such an extent that compliance with the Contract can no longer reasonably be demanded, Seller shall be entitled to dissolve the Contract.

## Article 8. Complaints, return shipments

1. Buyer must inspect or arrange for the inspection of the purchased goods upon delivery. During this inspection, Buyer must verify whether the delivered products conform with the Contract, namely:

- whether the correct goods have been delivered;
- whether the delivered goods correspond with what has been agreed regarding quantity (for instance the number and the amount);
- whether the delivered goods meet the agreed quality requirements or – if such is lacking – the requirements that may be set for normal usage and/or commercial purposes.

2. If visible defects or deficiencies are identified, Buyer must report these to Seller in writing within two days of delivery.

3. Buyer must report hidden defects to Seller in writing within two days of discovery, but no later than seven days after delivery.

4. Buyer must grant Seller the opportunity to remedy the identified defects.

5. Goods bought on sample or selected at Seller's premises need not be taken back by Seller. Goods delivered on order shall only be taken back by Seller, if he has agreed in writing to the return of the goods. Without Seller's consent, returned goods shall be refused by Seller. Return shipments shall be sent at the expense and risk of Buyer and must be sent delivery carriage paid. Seller has the right to charge Buyer for packaging. Packaging shall be credited provided it is not more than one year old, provided Buyer has sorted it according to brand and content, and provided Seller has picked it up with his own vehicle. Packaging not charged to Buyer shall not be taken back.

6. Minor deviations in quality, amount, dimensions, colour, size, etc., that are deemed commercially permissible or technically cannot be avoided cannot provide any grounds for a claim.

7. Seller is not liable for differences in colour resulting from ingress of light and weather influences. Wood and upholstery must be cleaned according to guidelines.

8. Seller shall not be liable if goods turn out not to be suitable for the purpose for which Buyer purchased such from Seller.

9. Each right to make a claim shall expire if Buyer fails to meet his obligations referred to in this Article and as soon as the sold goods have been processed.

10. A claim shall grant no right to suspension of payments.

## Article 9. Guarantee.

1. Seller guarantees that the goods it delivers are free of design, material and manufacturing defects for a period of 12 months after delivery.

2. If the good shows a design, material and manufacturing defect, Buyer shall have the right to have the good

repaired. Seller may opt to replace the good, if repairing it comes up against objections. Buyer shall only have the right to replacement if repairing the good is not possible. A replaced good shall become the property of Seller.

3. The guarantee does not apply if loss results from improper handling, unless it can be demonstrated that Seller himself caused the loss.

4. Seller provides no guarantee on natural products, including wood, to the extent that it relates to goods that are inherent to the relevant natural product. For wood, that relates to small breaks, splits and cracks, as well as resin cores, knots, minor colour variations and nervations deviating from each other.

## Article 10. Retention of title.

1. The goods delivered by Seller shall remain the property of Seller and may not be resold or disposed of by Buyer until Buyer has complied with each of the following obligations from all contracts concluded with Seller:

- the consideration(s) relating to the good(s) itself/themselves that has (have) been or is (are) to be delivered;
- the consideration(s) relating to services that have been or are to be rendered in accordance with the contract(s);
- any claims due to non-compliance by Buyer with the contract(s), including penalties, interest and costs.

2. If Buyer fails to comply with his obligations or there is a well-founded fear that he shall not do such, Seller shall be entitled to remove or arrange for the removal from Buyer or third parties of delivered goods upon which the retention of title referred to in paragraph 1 rests. Buyer shall, with respect to the foregoing, be obliged to cooperate on penalty of a fine of 10% per day of the amount owed by him.

3. If third parties desire to establish or assert a right to the delivered goods subject to retention of title, Buyer shall be obliged to notify Seller as quickly as reasonably possible, as well as involved third parties, concerning the rights of Seller to the goods.

4. Buyer shall undertake to insure and to keep insured the delivered goods subject to retention of title against fire damage, explosion damage and water damage and against theft, and to allow inspection by Seller of the policy of this insurance product upon Seller's first request. Buyer shall undertake further, upon Seller's first request:

1. to pledge to Seller all claims of Buyer on insurers relating to the delivered goods subject to retention of title in the manner prescribed in Book 3, Section 239 of the Dutch Civil Code;
2. to pledge to Seller the claims that Buyer receives vis-à-vis his customers upon the resale of goods subject to retention of title and delivered by Seller in the manner prescribed in Book 3, Section 239 of the Dutch Civil Code;
3. to mark the delivered goods subject to retention of title as the property of Seller;
4. to cooperate in other ways with all reasonable measures relating to the goods that Seller desires to take for the protection of his proprietary rights, and which do not unreasonably hinder Buyer in the normal course of his business.

## Article 11. Payment.

1. All payments must be made at the office of Seller or deposited into a bank or postal giro account to be indicated by Seller. If no or no other payment term has been stipulated in the confirmation of instruction of Seller, payment must be made within five days of the invoice date.

2. Buyer may only put up the defence of setoff if either his claim is acknowledged by Seller, or the merits of his claim can be established in a simple manner.

3. If Buyer has not paid within the set payment term, he shall be in default by operation of law, and Seller shall have the right without any notice of default to calculate interest equal to the statutory interest rate plus 2% on the amount due as from the moment that Buyer is in default.

4. In the event of liquidation, bankruptcy or a moratorium of Buyer, the obligations of Buyer shall be immediately due and payable.

5. Payments made by Buyer shall always first be applied to settle all interest due and costs and subsequently to settle those due and payable invoices that have been outstanding for the longest period, even if Buyer announces that the payment relates to a later invoice.

6. If parties hereto have agreed cash payment at the moment of delivery, and Buyer is unable at that moment to meet his payment obligations, the goods shall not be delivered by Seller, and Buyer shall owe Seller the additional costs resulting therefrom, such as for extra transport.

## Article 12. Collection charges.

If Buyer is in default vis-à-vis or fails to comply with one or more of his obligations, all reasonable costs incurred for obtaining an out-of-court settlement shall be at the expense of Buyer, whereby Seller shall maintain the collection fee as contained in the calculation schedule for legal expense claims maintained by the Netherlands Bar Association (NOvA). If Seller can demonstrate that he has incurred higher costs, which were reasonably necessary, these higher costs shall also qualify for compensation.

## Article 13. Force majeure.

1. Failures of Seller in the execution of the Contract shall be regarded as force majeure and cannot be attributed to him if such failures cannot be attributed to his fault, nor shall such be at his expense pursuant to law, in accordance with the Contract or according to generally accepted standards.

2. The term 'force majeure' shall in any case be understood to mean:

- the circumstance that Seller cannot deliver, at all or in a timely or proper manner, a performance that is important in connection with the performance to be delivered by himself;
- strike actions;
- interruptions in traffic;
- governmental measures that hinder Seller in fulfilling his obligations in a timely or proper manner;
- a general lack of necessary raw materials and other goods or services necessary for realising the agreed performance; exceptional sickness absence.

3. The obligations of Seller shall be suspended during the period of force majeure. If the performance is delayed by force majeure in excess of two months, each of the parties hereto shall be entitled to dissolve the Contract without an obligation to provide compensation for loss arising in such case.

4. Seller shall also have the right to invoke force majeure if the circumstance hinders (further) fulfilment after Seller should have fulfilled his obligation.



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5. If Seller, when force majeure occurs, has already partially fulfilled its obligations, or can only partially fulfil its obligations, Seller shall be entitled to invoice separately the part that has already been or is to be delivered, and Buyer shall be obliged to pay this invoice as if it related to a separate contract. This shall, however, not apply if the part that has already been or is to be delivered has no independent value.

## **Article 14. Liability.**

Seller is vis-à-vis Buyer only liable in the following manner:

1. The only liability applicable for loss consisting of defects in delivered goods shall be that as set out in Article 9 (Guarantee) of these Conditions.

2. For that matter, the liability of Seller is limited to the loss suffered by Buyer that is the direct and sole result of Seller's fault. This loss shall only qualify for compensation if Seller is insured against such loss or, in light of the practices in the sector, should have reasonably been insured, up to the maximum amount of the insurance payment.

3. If in any case the insurance policy does not offer cover or the insurer does not proceed with payment, or if the provisions in the previous paragraphs of this Article cannot be invoked, the liability of Seller shall not exceed the invoice value of the relevant contract between parties thereto.

4. Seller is not liable for consequential loss. Buyer must, if he so desires, insure himself against such loss.

5. Seller is liable for loss caused by intent or gross negligence of Seller or his subordinates in leading positions

## **Article 15. Drawings.**

Drawings, cards, photographs, illustrations and/or specifications shall remain the our property. Such documents must be returned to us immediately upon request. In the event principal and/or third parties use such documents without our prior consent, we shall be entitled to demand compensation from principal for losses incurred and loss of profit. Principal shall in any case be obliged to pay all costs for the manufacture of the goods referred to if such goods have been made exclusively for him prior to the issue of the instruction.

## **Article 16. Changes of address.**

Buyer is obliged to report changes of address to Seller immediately and in writing. Goods that have been delivered to Buyer's address last known to Seller shall be deemed to have been received by Buyer.

## **Article 17. Disputes.**

All disputes between Seller and Buyer shall be adjudged, if the court is competent, by the District Court at Zutphen, irrespective of the right of Seller to apply to the competent court pursuant to law or the applicable international treaty.

## **Article 18. Applicable law.**

Each contract between Seller and Buyer is governed by Dutch law. Buyer can obtain the original Dutch version and the translation into German of these Conditions upon request. In the event of possible disputes, the original Dutch version shall be binding.