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**GENERAL SALES CONDITIONS**

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**GENERAL SALES CONDITIONS APPLICABLE TO ALL SALE OF GOODS FOR WHICH A MEMBER OF THE VGP GROUP ACTS AS SUPPLIER**

**1. Definitions and scope**

1.0 The following capitalized terms are defined as follows:

“**Customer**” means the legal entity issuing the Order and purchasing the Goods from the Supplier.

“**Goods**” means the goods described in the accepted Order.

“**Intellectual Property**” means patents, trademarks, rights in design, copyrights (including software rights), are registered or unregistered), all applications for the same, all other intellectual property rights and all rights or forms of protection of an equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

“**Offer**” means a request for an Order.

“**Order**” means the purchase order for Goods.

“**Personal Data**” means personal data as defined in the GDPR.

“**Specification(s)**” means the description / specifications of the Goods as set out in or attached to the accepted Order.

“**Supplier**” or “**we**” means the member of the VGP Group accepting the Order and selling the Goods to the Customer.

“**VGP Group**” means the group of companies which are active in the (carton) packaging industry across Europe, and which have Van Genechten NV as ultimate parent company.

1.1. These general terms and conditions of sale (the “**Terms and Conditions**”) shall apply to and be part of all Orders (and/or (framework) contracts) accepted by Supplier and its Customers. These Terms and Conditions shall also apply to all pre-contractual relationships between the Supplier and its Customers, including to any Offer made by the Supplier. By placing an Order, the Customer accepts the applicability of these Terms and Conditions and declines the applicability of its own purchasing terms and conditions (if any).



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1.2. Unless expressly otherwise agreed in writing, these Terms and Conditions shall prevail in the event of a discrepancy with any other written or oral correspondence or documents exchanged between the Supplier and its Customers.

1.3. Any variation from these Terms and Conditions is only binding when it is explicitly accepted in writing by the Supplier. The Customers' consent (either implicitly or explicitly) to the applicability of these Terms and Conditions to a contract shall automatically apply to all subsequent Orders (and/or contracts).

1.4. Any general conditions set forth by Customer in any document are explicitly rejected and shall not be binding, unless and to the extent that they have been explicitly accepted by the Supplier in writing.

1.5. A reference to an Article is a reference to an article to these Terms and Conditions, barring any divergent provision in writing to the contrary.

1.6. Headings are included for clarity and the purpose of reference in the context of these Terms and Conditions. They are not intended for interpretation, nor will they limit the content of the Terms and Conditions.

1.7. Terms like "including", "for instance", "e.g.", "especially" and "such as" imply a non-exhaustive enumeration. Terms like "with reference to", "in particular" and "i.e." imply precision.

1.8. These Terms and Conditions govern the entire contractual relationship between Supplier and Customer; irrespective of whether previously (i.e. prior to the date of these Terms and Conditions) other arrangements may have been in place. These Terms and Conditions always prevail and are the sole terms and conditions which govern the contractual relationship between the Supplier and the Customer.

## **2. Offers**

2.1. Each Offer from the Supplier is non-binding. Unless stipulated otherwise, an Offer from the Supplier is considered to be expired in case it is not expressly confirmed (either in writing or electronically) by an Order of the Customer within one (1) month from date of the aforementioned Offer.

2.2. Orders must be in line with the quantities offered. In case the quantities of an Order differ from the quantities offered, prices will be revised accordingly in the Order acceptance.

2.3. Any costs resulting from an excessive price quotation preparation/exercise (e.g., administrative, research and development, etc.) will be passed on by the Supplier to



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the Customer if the Offer is not followed by an Order, provided the Supplier has given pre-notification to the Customer.

2.4. Should the preparation of an Offer require development, engineering, sample costs and proofs, the Supplier is entitled to pass on these costs to the Customer.

2.5. The ownership of any Intellectual Property of Good designs remains exclusively with the Supplier; any Intellectual Property of the Supplier cannot be used by the Customer without (royalty or other way of) payment and/or prior written agreement from Supplier.

2.6. Prices in the Offer are based on the elements that the Customer specified in its request. In case of changes, prices will be revised.

2.7.. In case there are direct agreements in place between the Customer and a third party supplier for delivery of any one or more components of which the Goods are composed (eg direct board agreements) then the Supplier assumes no responsibility for the quantity, quality, timely delivery (and/or any other of such components) of the Goods which are governed by such a direct agreement.

**3. Order Acceptance and Pricing Conditions**

3.1. A sales agreement is concluded only when acceptance of the Order has been given by the Supplier to the Customer either in writing or in electronic format. Unless if agreed otherwise, such an Order acceptance will be sent by the Supplier to the Customer within a maximum period of two (2) weeks from the date of the receipt of the Customer's Order, in the absence of which the Order shall be deemed rejected.

3.2. The Customer must clearly specify in its Order the Goods delivery schedule. The costs resulting from that schedule will constitute an element of the cost price.

3.3. Whenever an agreement includes delivery of Goods with a delivery time after three (3) months from date of its signing, provisions about quantities and delivery have to be fixed and Customer acknowledges and agrees that Supplier can propose new pricing for the subsequent term of three (3) months in order to amend and reflect changes in raw material purchase prices and other price fluctuations in the Supplier's supply chain impacting the production and pricing of the Goods.

3.4. In view of maintaining an economically viable long term supply chain relationship and demonstrating the partnership model which Parties strive for the Prices in the agreements are based on the raw material prices (and other relevant supply chain cost elements such as (without limitation): glue, ink, vanish, energy and fuel cost, employee



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costs, transport costs and wooden pallets) valid on the date of the agreement. In the event of a change of these raw material prices, the contracting parties undertake to renegotiate the prices for the agreed period. If no reasonable agreement can be reached, the Supplier reserves the right to terminate the contract unilaterally (without any penalty becoming due). The Supplier will use objective indices to demonstrate fluctuations in its production costs, including, without limitation:

- the consumer index (CPI) in the relevant country of production of the Products impacting the conversion cost portion of the Price, available at: <https://tradingeconomics.com>;
- RISI (PPI) for the board cost portion of the Price;
- the European Union average CPI for transportation for the transport cost portion of the Price, available at: <https://tradingeconomics.com/european-union/cpi-transportation> ; and
- the average European reference rate for energy index for the energy cost portion of the Price, available at: <https://tradingeconomics.com/euro-area/energy-prices>.

3.5. Any change in the elements of the agreement caused by the Customer give the Supplier the right to amend the prices accordingly.

3.6. Unless parties explicitly agree otherwise, the costs of packaging, transport (insurance), import and export duties as well as all other levies and taxes in respect of the delivered Goods and transport shall be borne by the Customer.

3.7. If the Customer cancels the Order after its acceptance, the Supplier is entitled to invoice to the Customer full costs of the board and materials it reserved for the Order plus all additional costs incurred for the preparation of the Order and lost profit on the cancelled agreement.

#### **4. Delivery, Invoicing**

4.1. Goods will be delivered and invoiced on the delivery date fixed and delivery terms will be defined in the Order acceptance resp. agreement. Delivery dates are indicative only.

4.2. If delivery of the total quantity is not completed within the agreed period at the request of the Customer, the Goods and additional costs of storage (pallets per week) will be invoiced by the Supplier to the Customer.



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4.3. If, upon the Customer's request, the Goods are stored with the Supplier longer than six (6) months after production date of the Goods or if the raw material board (of which the Goods are composed) had been delivered to the Supplier longer than six (6) months prior to the production date of the Goods then any guarantee to the Goods is forfeited (without prejudice to Article 4.5).

4.4. The Supplier retains title to all Goods purchased by and possibly delivered to the Customer, until such time as the Supplier has received full payment (including VAT) of the sales price, so in principal, any interests, damages and costs (e.g. delivery costs, storage costs, insurance costs, etc.). If the Customer has not paid for the Goods or has not paid them in full, the Customer is prohibited from making any act of disposal relating to the Goods, including sale, exchange, loan or any other act of disposal. To the extent, these General Terms and Conditions are subject to German law then Parties agree to the concept of extended Retention of Title (in German "*Verlängerter Eigentumsvorbehalt*") pursuant to which the Customer is entitled to resell the Goods, for which, in return, the Customer assigns its claim on the purchase price vis-à-vis the its own customer to the Supplier as a security (instead of the title to the goods) until full settlement of all claims against the Customer.

4.5. Notwithstanding Article 4.4, all risks (e.g. of loss, destruction, damage or deterioration) linked to the Goods are transferred in full to the Customer as from the moment of delivery.

4.6. If, upon the Customer's request, the board (and/or other raw materials) reserved for the Order is not converted into finished Goods within one (1) month of the agreed delivery date, the Supplier is entitled to invoice the board to the Customer and storage charges may be applied (pallets per week). Finished Goods can be stored free of charge within the first 2 (two) months after production of the Goods, but storage costs will be invoiced as from the first calendar day of the third month after production during which they are kept in storage by the Supplier. Storage cost rates will be updated regularly and shared by the Supplier with the Customer. The Supplier can deviate from this clause and allow longer free storage periods, in which case the relevant free storage period will also be communicated separately to the Customer.

4.7. Particular services such as rush Orders or exceptional delivery requirements will be invoiced additionally.

4.8. The Customer agrees to receive only electronic invoices. In any case, the payment of an electronic invoice from the Supplier results in the Customer's tacit agreement to that effect.



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**5. Intellectual Property**

5.1. The information and data contained in any document or support (i.e. designs, dies, negatives, plates, printing cylinders, forming tools, films and digital data) supplied and prepared by the Supplier shall remain the Supplier's exclusive property along with all Intellectual Property attached thereto. Therefore, no right, title or interest is transferred to the Customer in the names, trademarks, trade secrets, patents, pending patents, expertise, copyright and other Intellectual Property relating to the Goods even if the Customer has financially contributed to their creation. This Article 5.1 is without prejudice to the Customer's Intellectual Property on the Customer's trademarks and the creations (e.g. designs, texts, projects, drawings, sketches) created by or on behalf of the Customer to be used on and/or in connection with the Goods.

5.2. The Customer shall defend, indemnify and hold harmless the Supplier from and against any and all claims, losses, damages, costs, penalties, liabilities, judgments, amounts paid in settlement, fines and expenses (including, without limitation, court costs and reasonable fees of attorneys and other professionals) arising out of or in connection with any infringement of Intellectual Property in the case of:

- the production or reproduction in accordance with the Order and the instructions of the Customer, and/or;
- materials and/or texts, trademark designs and construction for opening and closing of the Goods made available to the Supplier by the Customer or on behalf of the Customer by third parties.

5.3. Projects, drawings, sketches, printing proofs, blanks, die cutting and other tooling etc. property of the Customer are stored with the Supplier at the risk of the Customer.

5.4. The storage of the materials mentioned under 5.3 ends one (1) year after their latest use, after which they can be destroyed at the Customer's expense. In case of specific legislation related to the sector in which the Customer operates and provided that the Customer has informed the Supplier thereof in writing beforehand, a longer storage term not exceeding the legal provisions can be agreed. The costs thereof shall be agreed upon between the Parties in writing.

**6. Tolerances and warranty**

6.1. Printing: Printing proofs, texts and bar codes approved by the Customer are binding for the Customer.

6.2. Quantity: Tolerances of the quantities delivered are subject to the individual job



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requirements with regard to quantity, material, process type, size, etc. The appropriate percentage of tolerance will be specified in the Order acceptance. In the absence of a Specification in the Order acceptance, the Supplier is deemed to have performed adequately if quantities do not exceed plus or minus 10%.

6.3. Within the defined quantity tolerances, the invoicing is based on the effective delivery.

6.4. The Supplier warrants that the Goods during the Warranty Period shall:

- (a) conform to the agreed Specifications, or in the absence thereof, to the Supplier's standard specifications for the Goods; and
- (b) be delivered free from any lawful security interest or encumbrance unknown to the Customer (without prejudice to Article 4.4).

**"Warranty Period"** means a period of six (6) months following the earlier of either the production date of the Goods or the date on which the raw material board of which the Goods are composed, have been delivered to the Supplier and, in both cases, subject to storage conditions approved and/or controlled by Supplier.

6.5. The Customer must determine for itself, by tests or otherwise, the suitability of the Goods for the Customer's purpose. The Supplier makes no warranty that the Goods are merchantable or fit for any particular purpose.

6.6. The Supplier makes no other warranty, express or implied, than the warranty provided in Article 6.4.

## **7. Packaging**

7.1. Packaging Specifications must be defined and agreed upon in the Order acceptance or contract. The Supplier is entitled to charge changes by the Customer in the agreed Specifications separately.

## **8. Acceptance of Goods and liabilities**

8.1. Upon delivery of the Goods, the Customer shall immediately and as thoroughly as possible inspect the Goods. In the event of any discovered defects (including damage during transport), the Customer will notify the Supplier forthwith and ultimately within 24 hours after delivery. Failure to comply with these obligations will result in forfeiture of the claim.

8.2. The Customer will be entitled to submit claims relating to defects that could not be



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discovered upon delivery, to be demonstrated by the Customer, until one (1) month after delivery was made. After expiry of this period the Customer shall not be allowed to submit any further complaints relating to any possible defects in the Goods to the Supplier.

8.3. Supplies acknowledged by the Supplier as being defective will either be corrected or credited. This is the only remedy to which the Customer is entitled. The Supplier shall not be liable to pay compensation for consequential losses.

8.4. If a part of the delivery gives reason for a claim, the principle of mitigation for adverse consequences for the remainder of the delivery will be applied.

8.5. Any qualitative claim not accepted by the Supplier should be submitted to an arbitration committee being composed out of 2 (two) independent industry experts whereby each party can appoint 1 (one) such expert.

8.6. The liability of the Supplier is limited to the amount of the invoice corresponding to the Goods which are disputed. Supplier has no liability for consequential losses or indirect damages (including, without limitation: loss of profit/revenue, down-time, damages to or claims from third party (end) customers of the Customer, etc.).

8.7. Incorrect storage or use of the Goods by Customer precludes the liability of the Supplier.

8.8. Under no circumstance can the Customer make a claim against Supplier after the Goods delivered or part thereof have been used, processed or converted.

### **9. Payment**

9.1. Unless otherwise agreed in writing by the Supplier, payment shall be made within thirty (30) calendar days net<sup>1</sup> as from the date of the invoice, without any deduction whether by way of set-off, counterclaim, discount or otherwise unless the Supplier has given its prior written consent to the deduction. Bank charges will be borne by the Customer. If the invoice must contain any specific technical details for Customer to process and pay it, then Customer must inform Supplier thereof within 15 (fifteen) calendar days from the invoice date. Failure from Customer's side to notify Supplier on any such technical details which must be on invoices, within the 15 (fifteen) calendar day period, will be considered as a waiver of any such conditions and will trigger payment of the relevant invoice within the payment term defined in the relevant invoice.

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<sup>1</sup> In no event can any payment term exceed sixty (60) calendar days as per EU regulations, available at: [https://single-market-economy.ec.europa.eu/smes/sme-strategy/late-payment-directive\\_en](https://single-market-economy.ec.europa.eu/smes/sme-strategy/late-payment-directive_en)





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Technical errors (or missing information) in an invoice will never allow the Customer to extend obligation to pay beyond the original payment term.

9.2. If the Customer fails to pay any sum due pursuant to the contract all outstanding invoices and sums payable to the Supplier shall become due automatically and immediately.

9.3. Any amount unpaid on its due date shall bear interest, by operation of law and without any formal notice, at the annual rate equal to the statutory interest rate as then applicable in the country where the Supplier's registered office is located, increased with 2%, until payment is made.

9.4. All prices are payable in the currency of the Supplier's registered office.

9.5. The Supplier has the right to first apply payments to any outstanding costs, conventional flat-rate compensation and moratory interest before applying them to the outstanding principal.

9.6. The Supplier has the right to offset all amounts it would owe to the Customer for whatever reason against the amounts that the Customer owes to the Supplier, whether or not such amounts are due. The Customer accepts that this does not affect their legal rights.

**10. Defaults by the Customer**

10.1. The Supplier is entitled to suspend its obligations under any agreement with the Customer with immediate effect or to terminate any agreement with the Customer at the Customer's expense, without prior judicial intervention, without owing any compensation to the Customer, in case the Customer is in serious breach of its obligations under any agreement (e.g. its payment obligations, its obligations to take delivery of the Goods), and the Supplier has given notice of default to the Customer, and the Customer has failed to fulfill his contractual obligations within a period of 15 (fifteen) calendar days after said notice of default, unless such remedy period is meaningless in view of the nature of the contractual default. In such cases, the Supplier is not liable in any way whatsoever for any damage suffered by the Customer (or his Customers) as a result thereof.

10.2. The Supplier has the right to terminate any agreement with the Customer at the Customer's expense without prior judicial intervention, if it is clear that the Customer, after having been reminded to provide sufficient guarantees for the proper fulfilment of its obligations under any agreement with the Supplier within 15 (fifteen) calendar days, will not perform its obligations and that the consequences of such non-performance are sufficiently serious for the Supplier.



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10.3. Termination at the Customer's expense according to Article 10 does not prejudice the Supplier's right to compensation and its other rights as a result of the termination.

**11. Force Majeure**

11.1. The Supplier may defer the date of delivery or discontinue such delivery or cancel the agreement or reduce the volume or quantity of the Goods ordered by the Customer if it is prevented from or delayed in the carrying on of its business due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency or defense requirements, riot, civil commotion, fire, explosion, flood, the impact of Brexit regarding (without limitation) transportation/delivery times, taxation and custom checks, epidemic (including, amongst other things: (the aftermath of) covid-19 or any other equivalent virus pandemic), accident, malfunction of machinery or apparatus, lock-out strike or other labor dispute (whether or not relating to either party's workforce), or restraint or delay affecting carriers or inability or delay in obtaining supplies of adequate or suitable raw materials including fuel and power, or sharp increase in the price of such raw materials, or non- or non-timely performance by any third party. Provided that, if the event in question continues for a continuous period in excess of six (6) months, the Customer shall be entitled to give notice in writing to the Supplier to terminate the contract. Equal to force majeure are events beyond the Supplier's control, which substantially change the economic importance or contents of the delivery, considerably affect the Supplier's business or render the Supplier's contractual duties excessively onerous. In such circumstances, the Agreement shall be adapted taking into account the principles of reasonableness and good faith. To the extent this is not economically justifiable, the Supplier shall have the right to rescind the contract without being due any indemnification to the Customer.

11.2. In the event of a temporary situation of force majeure, the Supplier shall be entitled to extend the envisaged agreed delivery scheduled by the time during which the temporary situation continues. As soon as either party becomes aware of the occurrence or the imminence of such an event, it shall inform the other party thereof and shall take reasonable steps to limit its damageable consequences.

**12. Processing of Personal Data**

12.1. The Supplier and the Customer shall take all appropriate technical and organizational measures to ensure that processing of Personal Data complies with applicable data protection legislation, including the GDPR.

12.2. The processing of Personal Data by the Supplier is governed by its privacy policy, which can be consulted at <https://vangenechten.com/gdpr-fair-processing-notice>.



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12.3. If and to the extent the Supplier qualifies as a processor of Personal Data with respect to the Customer, whereby it processes Personal Data of certain data subjects on behalf of the Customer, the Supplier and the Customer shall conclude a data processing agreement according to article 28 GDPR.

**13. Governing Law**

13.1. These Terms and Conditions and any accepted Order resp. agreement entered into between the Supplier and its Customers will be governed by and construed and enforced in accordance with the laws of the country where the Supplier's registered office is located. The provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods are explicitly excluded.

**14. Dispute**

14.1. Any dispute arising out of or in connection with this Agreement, if not amicably settled, shall be subject to the jurisdiction of the competent courts of the city and country with commercial courts closest to place of incorporation of the Supplier.