



# General Terms and Conditions Smartfloor B.V. Bedrijvenpark Twente 415, 7602 KM Almelo, The Netherlands

(State 08/2021)

## I. General – scope

1. Our deliveries, services, and offers are based exclusively on these General Delivery Terms and Conditions. We do not recognize conditions of the Client that contradict or deviate from our General Delivery Terms and Conditions, unless we expressly agree to their validity in writing. Our General Delivery Terms and Conditions also apply if we make deliveries to / perform services for customers without reservations while aware of customer conditions that contradict or deviate from these General Delivery Terms and Conditions.

2. All agreements between us and the Client for the implementation of this agreement must be put into writing in this agreement.

3. Our General Delivery Terms and Conditions apply to all companies, legal persons under public law, and special trusts under public law as defined in § 310 Para. 1 BGB as well as private persons.

4. Our General Delivery Terms and Conditions also apply to all future business transactions, even if they are not explicitly agreed upon again.

## II. Offers and order confirmation

1. Our offers are always subject to change and only become binding to us after we confirm the order. Agreements with our representatives only become legally binding when we confirm them in writing. Any illustrations and drawings accompanying our offers as well as weight specifications shall be considered approximate.

2. The ownership rights and copyrights to drawings, cost estimates, and other documents provided to our customers remain with us. Our offers and documents may not be made available to third parties, in particular competing companies, and shall be returned upon request. We reserve the right to accept an agreement in any case despite prior offer.

3. If the Client makes insufficient, incorrect, or misleading statements about the product to be transported or if he dispenses with advance transport tests, then we shall not be liable for any damage or defects that are due to one of these circumstances.

4. When the client submits the entire or details of the construction document or when he specifies size, dimensions, material consistency etc. of the delivery items and/or performance data of the drives, he shall be responsible for the parameters / specifications. In this respect we only are responsible for the proper implementation meeting workshop standards.

## III. Delivery time

1. The delivery time begins when our order confirmation is sent, however not before clearing up all technical questions of the assignment and not before the documents, permits, and releases to be procured by the Client have been submitted and an agreed down payment has been made. The delivery times in the order confirmation are non-binding. Adherence to our delivery/ service obligations is also contingent on the timely and proper fulfillment of the Client's obligations from this agreement.

2. The delivery time shall be extended appropriately in case of labor dispute measures, in particular strikes and lock-outs, as well as in case of unforeseen events for which we are not responsible, if these events can be shown to have an essential influence on the production or shipping of the delivery item or its erection/assembly and were not foreseeable at the time the agreement was concluded. This shall also apply if such circumstances arise with one of our suppliers. We shall inform the Client ASAP of the start and end of such impediments.

3. If we default on delivery for reasons for which we are responsible, then the Client is entitled to withdraw from the contract under the legal conditions.

4. The following applies to our liability in case of a delivery default: If the delay is due to a slightly negligent violation of an essential duty under the agreement or a so-called "cardinal obligation", our liability is limited to the damages that are foreseeable for the typical agreement. Apart from that, damage claims for slight negligence are excluded. Apart from that, the liability in case of a delivery default follows the legal regulations.

5. The agreed delivery times are considered as met:

a) for deliveries without assembly, as soon as an operational delivery has left our company on time or the item has been declared to be ready for shipping.

b) for delivery with assembly, as soon as the delivery item is ready for operation. Adherence to our delivery obligations is contingent on the timely and proper fulfillment of all Client obligations.

6. The risk transfers to the Client at the latest when the delivery item is shipped, even if the delivery was quoted as free to destination; in case of delivery with assembly, the risk transfers on the day it becomes operational.

## IV. Prices and payment conditions

1. The prices are ex factory without packaging. The packaging is billed at cost, but cannot be returned.

2. We will only be able to consider changes to the construction of the delivery item, which the Client desires after order confirmation, free of charge if we do not incur additional costs due to this. We will bill for all changes that were made at the request of the Client without exception. All payments must be made as agreed, free of charges to our paying agent, in full, and as stated on the invoice.

3. If the retained ownership goods are processed in, connected to, or mixed with other goods by the Client, we are entitled to coownership in the resulting object in the relation of the invoice amount of the retained ownership goods to the invoice amount of the other used goods.

4. If our ownership lapses due to connection of mixing, then the Client shall already now assign to us the ownership rights to the new material or object to which he is entitled to the extent of the invoice value for the retained ownership goods. He shall store it for us free of charge. The hereby created co-ownership rights are considered retained ownership goods.

#### **V. Retention of ownership**

1. All delivered goods remain our property until all claims have been fulfilled (retained ownership goods). This also applies if payments were made for specially designated claims.

2. Retained ownership goods are processed and used, affecting us manufacturer as defined in § 950 BGB, without binding us. The processed goods are then considered retained ownership goods.

3. If the retained ownership goods are processed in, connected to, or mixed with other goods by the Client, we are entitled to coownership in the resulting object in the relation of the invoice amount of the retained ownership goods to the invoice amount of the other used goods.

4. If our ownership lapses due to connection of mixing, then the Client shall already now assign to us the ownership rights to the new material or object to which he is entitled to the extent of the invoice value for the retained ownership goods. He shall store it for us free of charge. The hereby created co-ownership rights are considered retained ownership goods.

5. The buyer may sell the retained ownership goods only in usual business transactions, at his normal business conditions, and as long as he is not in default, provided that he agrees with his buyer to a retained ownership right and that the receivables of the sale are passed on to us. He is not entitled to dispose of the retained ownership goods in other ways.

6. The compensation claims of the buyer from the sale of the retained ownership goods are assigned to us at this time. They serve as collateral to the same extent as the retained ownership goods. If the Client sells the retained ownership goods together with goods not sold by us, then the assignment of the claim from the sale only applies at the invoice value of the respective sold retained ownership goods. In case of sale of goods to which we have coownership rights, the claim assignment applies at the value of this co-ownership.

7. If the Client uses the retained ownership goods to fulfill a work contract or work assignment contract, then the above regulations apply correspondingly to the claim from this contract.

8. If the value of the existing collateral exceeds the secured claims by more than 10%, then we are obligated to release the collateral of our choice upon demand of the Client.

#### **VI. Assembly**

If we also assemble the product, our special Assembly Regulations apply.

#### **VII. Guarantee – violation of duty – liability – statutory limitation**

1. The guarantee right of the Client are contingent on whether he has properly fulfilled his responsibility to inspect and file a defect complaint pursuant to § 377 HGB [Commercial Code].

2. The guarantee period is 12 months starting on the day the goods are delivered to the Client, independent of when the Client files a defect complaint.

3. If our operating or maintenance instructions are not followed, changes are made to delivery items, parts changed or consumables used that do not meet the original specifications, then the guarantee and liability lapses if and to the extent one of these circumstances caused a defect and/or damage. Warranty for normal wear and tear is excluded.

4. If there is a defect of the delivery object, the Client may demand a replacement pursuant to the legal regulations.

5. If the replacement fails, then the Client may choose to either withdraw from the agreement (withdrawal) or to reduce the delivery price via a declaration to us (abatement).

6. Unless specified otherwise below, any further claims of the Client are ruled out, no matter for what legal reason. We generally are not liable for damage that did not occur in the delivery item; in particular, we are not liable for loss of income or other financial losses of the Client.

7. Liability for loss of profits or even costs for a temporary replacement, such as rental car costs, is excluded.

8. Not included in the above exclusion is damage to life, limb, and health if we are responsible for a violation of a duty and for other damage due to intentional or grossly negligent violations of duties by us. A violation of duty by us is equivalent to one by our legal representative or subcontractor. If we are responsible for the violation of duty, the Client is entitled to withdraw from the agreement under the legal conditions unless it is a defect of the delivery object.

9. If we culpably violate an essential agreement duty or a so-called "cardinal obligation", the liability is limited to the foreseeable damage typical for this agreement; otherwise it is excluded pursuant to Para. 5. This does not include damage to life, limb, and health and other damage that is due to intentional or grossly negligent violations of essential agreement duties or the so-called "cardinal obligation" on our part. Here, too, a violation of duty by us is equivalent to one of our legal representative or subcontractor.

10. If we are responsible for a violation of duty, the Client is entitled to withdraw from the agreement under the legal conditions unless it is a defect of the delivery object.

11. The statute of limitations for claims and rights due to defects in deliveries and services – no matter for what legal reason – is one year. These statutes of limitation also apply to all damage claims in connection with the defect, independent of the legal basis of the claim. This also does not affect further claims in case of fraudulent concealment of defects or the acceptance of a quality or durability guarantee.

### **VIII. Joint liability**

1. Any further liability for damage claims than provided for in VII Para. 5 to Para. 8 is excluded – without regard to the legal nature of the claim.

2. The regulation pursuant to Para. 1 does not apply to claims pursuant to §§ 1, 4 Product Liability Act. If the liability limitation pursuant to VII Para. 6 does not intervene for claims based on producer liability pursuant to § 823 BGB, our liability is limited to the replacement of the insurance. If it does not set in at all or not completely, we are obligated to liability up to the amount of the coverage sum.

3. Independent of fault, possible liability in case of fraudulent concealment of a defect or from accepting a guarantee or an acquisition risk is not affected by this. The regulation pursuant to Para. 1 also does not apply in this case.

4. If our liability is excluded or limited, this also applies to the personal liability of our employees, representatives, and subcontractors.

### **IX. Applicable law**

Dutch law applies exclusively to the contractual relationship; the UN Convention for the International Sale of Goods is excluded.

### **X. Jurisdiction – place of fulfillment – transfer of risk**

1. Jurisdiction lies at the location of our headquarters.

2. Unless stated otherwise in the order confirmation, our headquarters shall be considered the place of fulfillment.

3. The risk transfers to the Client when the delivery item leaves our factory, even if we deliver free to the assembly place.

### **XI. Severability clause**

Should one or more regulations of these General Delivery Terms and Conditions be or become invalid, this shall not affect the validity of the remaining regulations; the remainder of the concluded agreement remains valid. The invalid regulation shall be replaced by a valid one that comes as close as possible to the intended economic meaning and purpose of these General Delivery Terms and Conditions.