

## ARTICLE 1: DEFINITIONS

In these General Terms and Conditions the following definitions are used, both in singular and plural.

1. **General Terms and Conditions:** these present General Terms and Conditions, irrespective of the form in which they are published (on paper or in electronic form, for instance through the website of **Mardenkro**).
2. **Mardenkro:** the enterprise with the trade name **Mardenkro B.V.**, registered in the trade register under number 18029088, registered at (5111 PS) Baarle-Nassau, The Netherlands, Geerstraat 8.
3. **Customer:** the (legal) entity to which the offer of **Mardenkro** has been directed, with which **Mardenkro** has entered into an Agreement or for the benefit of which the (legal) transaction has been/is performed.
4. **Agreement:** any engagement with **Mardenkro**, on the basis of which **Mardenkro** supplies Products and/or provides Services to Customer.
5. **Goods:** any objects forming the subject of any negotiations, offers, price quotations, Agreements or other (legal) transactions as part of the relations between **Mardenkro** and Customer.
6. **Delivery:** placing Goods at the actual disposal of Customer, an auxiliary person engaged by Customer and/or a third party engaged by Customer, which Goods are the subject of any Agreement or other (legal) transactions as part of the relations between Customer and **Mardenkro**.
7. **Cancellation:** the written notification of Customer to **Mardenkro** stating that the Agreement or any part thereof will not be used, or the notification of **Mardenkro** to Customer that the Agreement or part thereof will not be performed.
8. **Services:** any work and other activities which are the subject of any negotiations, offers, price quotations, Agreements or other (legal) transactions as part of the relations between **Mardenkro** and Customer.

## ARTICLE 2: APPLICABILITY OF THESE TERMS AND CONDITIONS

1. These General Terms and Conditions apply to any Agreements, including future Agreements under which **Mardenkro** sells Goods and/or performs Services on whatever ground, and to statements made as part of those, such as negotiations, offers, price quotations, order confirmations and other (legal) transactions as part of the relations between **Mardenkro** and Customer.
2. The General Terms and Conditions also apply to Goods and/or Services or part thereof, purchased by **Mardenkro** from third parties, which **Mardenkro** supplies to Customer, processed or otherwise, and to Goods which are supplied to Customer by any third party in performance of the offer, price quotation, Agreement or other (legal) transaction according to the instructions of **Mardenkro**.
3. Any General Terms and Conditions presented to **Mardenkro** by Customer at any given point in time are hereby expressly rejected.
4. Deviation of the General Terms and Conditions as well as Agreements entered into between **Mardenkro** and Customer are valid only if they have been expressly confirmed by **Mardenkro** in writing.
5. In case of conflicting provisions in the Agreement(s) entered into between **Mardenkro** and Customer and the General Terms and Conditions, the provisions of the Agreement(s) entered into will prevail.
6. These General Terms and Conditions supersede any prior General Terms and Conditions and/or terms that may have applied between the parties. In case of modification of these General Terms and Conditions the modified version shall be part of any Agreement existing between the parties, unless Customer notifies **Mardenkro** in writing within seven days of receipt of or perusal of the modified version that it does not approve of the modified version.
7. The headings ('titles') of the various provisions of these General Terms and Conditions have been inserted for reasons of clarity only and are not relevant for the interpretation by Customer.
8. In case one or more provisions of these General Terms and Conditions should be void or declared invalid, the remaining provisions of these General Terms and Conditions shall remain in full force and effect. In that case **Mardenkro** and Customer shall consult in order to agree new provisions to replace the void or invalid provisions, taking into consideration the purpose and intention of the original provisions to the extent as possible. If and to the extent necessary for the proper performance of the Agreement, **Mardenkro** has the right to engage third parties to perform certain services.

**ARTICLE 3: CONCLUSION & CONTENTS OF THE AGREEMENT**

1. Offers made by **Mardenkro** are valid during 14 days of the date of the offer, unless a different term has been specified. The offer shall in any case contain a full description of the Goods to be supplied and services to be performed, and the method of payment. The Agreement is concluded if and at the time at which **Mardenkro** confirms to the Customer in writing that Customer has approved of the offer, or at the time at which **Mardenkro** has commenced the performance of the services specified in the offer. In case Customer's acceptance differs from the contents of the offer, only the contents of the offer shall apply, and deviations of the offer shall not be binding on **Mardenkro** unless stated otherwise by **Mardenkro**.
2. In case the acceptance by Customer of an offer/price quotation issued by **Mardenkro** contains any reservations with respect to or changes of the offer, the Agreement shall not be concluded – contrary to the provisions of the previous paragraph – unless and until **Mardenkro** has confirmed to Customer in writing that **Mardenkro** approves of the modifications of the offer, or until the moment at which **Mardenkro** has commenced the performance of the changed Agreement.
3. Prices quoted by **Mardenkro** in its price lists and advertisements are given as indications and are not binding on **Mardenkro**. However, said prices are binding in case of an offer made to and drawn up for a specific Customer by **Mardenkro**. **Mardenkro** shall at all times have the right to correct evident mistakes. The prices in the offers referred to are exclusive of BTW and other levies imposed by governments, and exclusive of shipping and any transport and packaging costs, unless expressly stated otherwise.
4. In case of a combined price quotation **Mardenkro** is not obliged to supply part of the Goods contained in the price quotation at a corresponding part of the price quoted. Said quotation does not apply to repeat orders either.
5. Minor deviations in quality and quantity that are accepted in trade or are technically unavoidable (including the composition of the Product) shall be permitted, and shall therefore not lead to any claim of default on the part of **Mardenkro**. Specifications of properties and designs, including samples provided to the (prospective) Customer by **Mardenkro**, shall serve as indications only, without obligation that the Good to be supplied must be consistent with said specifications or samples. **Mardenkro** is only obliged to supply Goods that meet the specifications used by **Mardenkro**, which specifications will be given to Customer upon request. The Goods will have the properties required for the purpose intended by Customer only in case said purpose has been expressly stated to **Mardenkro**, and in case **Mardenkro** has expressly confirmed that the Good to be supplied will have said properties.
6. The (prospective) Customer accepts the risk of incorrect transfer of information. Customer shall ensure that all information which is specified by **Mardenkro** as necessary for the performance of the Agreement or which Customer should reasonably understand to be necessary for said purpose, is provided to **Mardenkro** in good time. In case this information is not provided to **Mardenkro** in good time, **Mardenkro** has the right to suspend the performance of the Agreement. **Mardenkro** is not liable for any damage or costs of whatever kind caused by **Mardenkro** acting upon missing, incorrect, incomplete and/or late information with respect to the Delivery, provided by Customer.
7. In case of attributable default on the part of Customer **Mardenkro** has the right to rescind the Agreement concerned, and in addition to this, to rescind any existing Agreements between **Mardenkro** and Customer which have not yet been performed, by means of a written notice, or to suspend the performance of said Agreements. In that case **Mardenkro** also has the right to demand lump sum payment of anything owed to **Mardenkro** by Customer, and/or to carry out any future deliveries cash on delivery only. **Mardenkro** may at all times execute a retention right in order to enforce payment of any claim against Customer for any reason whatever. Unless approved of by **Mardenkro** in writing, Customer is not allowed to give Goods in custody to any third party for any reason whatever, unless Customer agrees with said third party that it will not enforce any retention rights vis-a-vis **Mardenkro**.  
The rights described in this paragraph will not affect any other rights granted to **Mardenkro** by virtue of the law, which **Mardenkro** may also enforce in case Customer is granted (preliminary) suspension of payment or is declared bankrupt, or in case the debt rescheduling arrangement is declared applicable to Customer.
8. The intellectual property rights in price quotations, specifications of properties and composition of products and such drawn up by **Mardenkro** shall vest in **Mardenkro**. They may be provided to any third

parties only in case **Mardenkro** has approved of that in writing upon request. **Mardenkro** has the right to demand that said documentation be returned at any time as **Mardenkro** sees fit. In case said documentation is not returned, Customer shall owe to **Mardenkro** the value of the documentation as determined by **Mardenkro**.

9. Offers in the form of budgets, offers, price lists or other documents may not be reproduced unless for the use of Customer only, and may not be made available to any third parties.

#### ARTICLE 4: PRICES, PAYMENT AND COSTS

1. All prices and rates given are in euro, unless stated otherwise in writing.
2. All prices and rates given are exclusive of turnover tax (BTW) and any other levies, taxes and EU-levies imposed by governments, and exclusive of costs of delivery, transport, installation, travel and accommodation expenses, costs of third parties and additional work, on the basis of performance during regular business hours, unless stated otherwise.
3. In case the Agreement has been entered into with a party that is a legal entity, **Mardenkro** has the right, in case the cost price of its Goods/Services increases between the time at which the Agreement is concluded until the day of Delivery (irrespective of the cause thereof, such as increases of levies/taxes and the price of materials, raw materials, energy, personnel costs and/or other factors) to modify the agreed price according to those price increases, even if these increases could have been foreseen at the time at which the offer was issued or the prices were determined. The provision above also applies in case of part deliveries or delivery on demand by **Mardenkro**, and applies to each separate part delivery.
4. In case of Delivery on demand or part Delivery **Mardenkro** has the right to invoice each Delivery to Customer separately. In case a price in a different currency than euro has been agreed and a negative fluctuation of the exchange rate occurs for **Mardenkro** at the time of Delivery compared to the time at which the Agreement was concluded, **Mardenkro** has the right to change the price agreed according to said fluctuation. In case of an increase of taxes and/or levies imposed by the government – including turnover tax - **Mardenkro** shall pass these increases on to Customer taking effect immediately.
5. In case the Agreement is entered into with a party that is not a legal entity, **Mardenkro** has the right, after three months after the Agreement has been concluded, to increase the price in case **Mardenkro** can substantiate that significant price increases have occurred between the conclusion of the Agreement and the desired time of Delivery or maintenance. In case the price increase exceeds 10%, Customer has the right to rescind the Agreement, unless this price increase is the result of an adjustment of the Agreement or results from a legal basis for increase as provided by law.
6. Payment must take place in the way specified by **Mardenkro** and in accordance with the specific terms agreed between **Mardenkro** and Customer, and in the currency stated in the invoice, unless the parties have agreed otherwise. In case no specific term for payment has been agreed, payment must take place within fourteen days of invoice date.
7. Payment is not considered received by **Mardenkro** until the payment has been credited to one of the bank accounts of **Mardenkro** or has taken place in cash.
8. Payments to be made by Customer or third parties are first applied to those claims to which **Mardenkro** cannot exercise the reservation of title described in the previous article. Subject to that, all payments are first applied to any costs due, then to any interest due and finally, to the oldest principal amounts respectively.
9. Customer can never exercise any right to set off or suspend payments. In case **Mardenkro** sends Customer a specified invoice of any amounts owed to **Mardenkro** by Customer and amounts owed to Customer by **Mardenkro**, said specification shall also be a declaration of set-off.
10. Upon expiry of the term of payment, Customer shall be in default without any notification of default being required, and Customer shall be obliged to pay to **Mardenkro** an interest in the amount of the legal interest increased by 3% per year on the final amount of the invoice from the due date until the date of payment. After the end of each year the amount for which interest is charged, shall be increased by the interest accrued during that year. In case of winding-up, bankruptcy, attachment or suspension of payment of Customer any claims of **Mardenkro** against Customer shall become due and payable immediately.

**Mardenkro** reserves the right to demand payment in advance of the entire price agreed or part thereof.

11. In case Customer does not settle any payable amount which Customer owes to **Mardenkro** despite a reminder for payment, and Mardenkro passes the claim on for collection to any third party, Customer shall owe to **Mardenkro** any and all judicial and extrajudicial costs. For the judicial costs the minimum amount shall be the non-contractual amount determined by the court. Costs to be paid shall be all costs of all services to be performed by the solicitor of **Mardenkro**, including sending summons and performing work towards a settlement. In case the court finds against **Mardenkro** in part, the costs will be reduced proportionately, unless the court should rule that such a reduction is not appropriate given the insignificance of the defect on the part of **Mardenkro**.

#### ARTICLE 5: DELIVERY

1. Unless expressly agreed otherwise Delivery shall at all times take place Ex Works, ex warehouse of **Mardenkro** in the Netherlands, or any other place to be specified by **Mardenkro** no later than at the time at which the Agreement has been concluded, which also applies in case **Mardenkro** has undertaken to transport the manufactured/purchased item. The risk of loss, destruction, decrease of value, damage, wear and tear of Goods that are the subject of the Agreement shall be the risk of Customer if and from the time at which the Goods have been delivered and therefore, put at the actual disposal of Customer or a third party specified by Customer.
2. Customer is obliged towards **Mardenkro** to immediately take delivery of the Good purchased or Service provided at the time at which they are offered to Customer. In case Customer does not take delivery of a Good, the Good shall be considered delivered at that point in time at which **Mardenkro** has offered the Good, and as of that moment the Good is retained by **Mardenkro** at Customer's risk and for the account of Customer (without ensuing duty for **Mardenkro** to insure the Good). In that case **Mardenkro** also has the right to invoice to Customer. In case Customer does not object within the term referred to for this purpose after Delivery, Customer shall be deemed to have approved of the quality and quantity of the Good delivered and of the method of Delivery.
3. Delivery terms agreed shall be approximate – even if a specific final date or specific time has been agreed – and shall not be final dates, unless expressly agreed otherwise. In case of late Delivery **Mardenkro** must be declared in default in writing, and **Mardenkro** must be given a reasonable term to be determined in consultation with **Mardenkro** for subsequent performance by **Mardenkro**.
4. The term of delivery does not commence until an agreement has been reached about all commercial and technical details, until all required information, final drawings and such are in the possession of **Mardenkro**, until the payment/installment agreed has been received, and all required conditions have been fulfilled.
5. **Mardenkro** has the right to suspend the fulfillment of its obligations until that point in time at which Customer has fully settled any payable claims of **Mardenkro**.
6. Except in case of gross negligence on the part of **Mardenkro** nonobservance of the term of Delivery does not give Customer the right to rescind the entire Agreement or part thereof. Nonobservance of the term of Delivery – for whatever reason – does not give Customer any right to carry out or engage third parties to carry out services in performance of the Agreement without permission from the court.
7. Nonobservance of the agreed time of delivery and/or performance of the Agreement shall in no case give Customer any right to damages. Damage of Customer caused by nonobservance of the term of delivery caused by acts or omissions of any third parties engaged, such as a forwarder (for instance a courier service) does not result in any right to damages either.
8. **Mardenkro** has the right to deliver the Goods to be supplied in parts, on condition that this takes place within the time agreed / within the term that was extended on the basis of the previous and next paragraph. Unless agreed otherwise **Mardenkro** shall at all times have the right to carry out Deliveries cash on delivery.
9. Extension of the term of Delivery shall also take place in case of a temporary interference as referred to in article 11. In that case the Delivery term – whether it has been extended on the basis of paragraph 3 or not – is extended by the period during which the interference continues – without Customer (if Customer

is a legal entity) having the right to rescind the Agreement, and by such a period during which **Mardenkro** may reasonably carry out Delivery.

10. The meaning of the Terms of Delivery shall be interpreted in accordance with the latest version of the Incoterms of the International Chamber of Commerce.
11. In case Customer wishes to return Goods to **Mardenkro**, this requires the prior written permission of **Mardenkro**. Costs of return shipment are borne by Customer, and the Goods will travel at Customer's risk. In case the return shipment, after the prior written permission given by **Mardenkro**, takes place on account of a suspected attributable default on the part of **Mardenkro**, the return shipment takes place at Customer's risk and for Customer's account, unless it is established at a later point in time or in court, that **Mardenkro** has been in default.
12. **Mardenkro** has the right to deliver the Goods in parts, unless it has been arranged otherwise in the Agreement. **Mardenkro** shall separately invoice the Goods delivered in that way.
13. In case it should appear at any point in time that the proper performance requires that the services to be provided be changed and/or extended, the parties shall modify the Agreement accordingly by mutual consultation and in good time, and if necessary, agree a different term of Delivery. In case these modifications and/or additions may also have financial consequences and/or consequences for quality, **Mardenkro** shall inform Customer of this in advance.

#### ARTICLE 6: PACKING

1. The packing used by **Mardenkro** shall be suitable for the transport of the packed Goods in regular transport by road or as freight under normal circumstances, taking into account the required care, and subject to any instructions, which will be stated on the packing or the waybill.
2. In case Customer wishes to give **Mardenkro** special instructions and/or requests with respect to packing, they should be given in writing and in good time. After receipt of that notification **Mardenkro** shall determine whether it can meet said requests and – if and to the extent that it complies with the instructions/ewquests concerned - will invoice all additional costs caused by that to Customer. In such a case the Goods shall at all times travel at Customer's risk.
3. Unless Customer has already paid for the packing, packing shall remain the property of **Mardenkro**, and Customer is obliged to return the packing to **Mardenkro** upon request, costs to be borne by Customer.

#### ARTICLE 7: SECURITY

**Mardenkro** has the right to demand the provision of security when the order is concluded. Further, **Mardenkro** has the right to demand (additional) security during the performance of the Agreement, in case it receives indications about the reduced creditworthiness of Customer that is such that it may reasonably doubt the perfect fulfillment of Customer's obligations. That will in any circumstances be the case if Customer – despite notice of default – does not meet one of its payment obligations. In case Customer, despite notice of default, fails to provide security, **Mardenkro** may exercise against Customer those rights as described in article 3 paragraph 7.

#### ARTICLE 8: RESERVATION OF TITLE AND PLEDGE

1. All Deliveries shall take place subject to a reservation of title. **Mardenkro** reserves the title to the Goods supplied and to be supplied to Customer under any Agreement, until Customer:
  - a. has fully paid the price of all those Goods, increased by any interest and costs due, and,
  - b. has paid all claims with respect to Goods and/or Services which **Mardenkro** has supplied/performed or will supply/perform under the Agreement concerned, and,
  - c. has paid the claims which **Mardenkro** may have against Customer in case Customer fails to fulfill the obligations referred to above.
2. Customer may in no way use the Good subject to reservation of title as security for other claims than those of **Mardenkro**. Customer does not have the right to sell, let, pledge the Goods subject to reservation of title, or encumber them or place them at the disposal of third parties in any other way.
3. In case a third party holds a Good subject to reservation of title on behalf of Customer, then Customer, if Customer is in default towards **Mardenkro**, is obliged to inform **Mardenkro** of the name and address of

said third party upon request, and **Mardenkro** will have the right to instruct said third party that said third party must hold said Good on behalf of **Mardenkro** from that point in time on.

4. Customer now and for henceforth gives its unconditional and irrevocable permission to **Mardenkro** or a third party to be specified by Mardenkro, to access all those places where the property of **Mardenkro** is or may be located at that point in time, and to take possession of said Goods in all cases in which **Mardenkro** wishes to execute its ownership rights.
5. The costs in connection with the returning of property shall be charged to Customer. After receipt the value will be credited on the basis of the value which the Goods appear to represent at the time at which they have been returned. This assessment or determination of the value shall be reserved to **Mardenkro** and/or a third party engaged by **Mardenkro** only.
6. In case third parties attach the Goods supplied subject to reservation of title or wish to create or execute a right with respect to said Goods, Customer is obliged to inform **Mardenkro** of this in writing as soon as may reasonably be expected.
7. If Customer creates a new good or orders a new good to be created from the Goods supplied by **Mardenkro** subject to reservation of title, Customer acts under instructions of **Mardenkro** and Customer will hold said good on behalf of **Mardenkro**. Customer will not become the owner until the moment at which the reservation of title is cancelled because any and all claims – however caused – have been paid. Customer undertakes to insure the Goods supplied subject to reservation of title and keep them insured against fire, explosion, water damage and theft, and to present the policy for inspection upon request.
8. Customer is obliged to look after the Goods supplied subject to reservation of title with due care and attention.
9. Any costs in connection with the creation and or exercise of any acts required in connection with the reservation of title and the provision of any other securities shall be borne by Customer.
10. To the extent that **Mardenkro** has any other claims against Customer and **Mardenkro** has supplied to Customer Goods which are not subject to reservation of title, Customer shall create a non-possessory pledge on these Goods for the benefit of **Mardenkro** by way of security for the fulfillment of its obligations; **Mardenkro** accepts this non-possessory pledge. Upon request of **Mardenkro** Customer shall sign a Deed creating said pledge. Customer guarantees that it is authorized to pledge the Goods, and that the Goods are not subject to any other pledge and/or are not encumbered with any limited rights except the rights of **Mardenkro**.
11. In case any third party should claim any rights to or with respect to any Goods that are subject to reservation of title or any Goods that are subject to the pledge referred to in the previous paragraph, Customer shall be obliged to inform said third party of the existing rights of **Mardenkro**, and to inform **Mardenkro** immediately.

#### ARTICLE 9: INSPECTION AND COMPLAINTS

1. Customer is obliged to inspect the sound condition of the Goods supplied / Service provided by **Mardenkro** immediately upon receipt, to the extent that this inspection is reasonably possible in said time. The inspection should in any case cover quantities and directly visible defects. In case Customer wishes to complain with respect to this, Customer must always inform **Mardenkro** of this in writing within five business days of Delivery, stating the reasons.
2. After Delivery Customer must also inspect the consistency of the Goods/Service with the contents of the Agreement, and – in case of any inconsistencies – submit a written complaint to **Mardenkro** within five business days after Delivery, stating the reasons.
3. In case and to the extent that the complaints concern defects that could not reasonably have been discovered within the times referred to in both paragraphs above, and have not been discovered despite the inspection required in said paragraphs, the complaint must be submitted to **Mardenkro** in writing, stating the reasons, within 5 business days, but in any case within one month after Customer has discovered or should reasonably have discovered the defect. This provision also applies in case the Good/Service does not possess a property which it should have possessed according to information provided by **Mardenkro**, or, in case the deviation concerns facts that were known or should have been known to **Mardenkro**, but were not communicated to Customer.

4. The Agreement shall be considered duly performed in case Customer has failed to carry out the inspection as referred to in this article in a timely fashion.
5. **Mardenkro** has the right to replace a prior defective performance by a proper performance unless the defect cannot be remedied.
6. Any claims and defenses vis-a-vis **Mardenkro** and any third parties engaged by **Mardenkro** for the performance of an Agreement shall become prescribed one year after Delivery/Performance of the Good and/or Service.
7. **Mardenkro** is not required to look into complaints submitted after the terms referred to in this article; said complaints shall not result in any liability of its company. In case **Mardenkro** looks into those complaints its efforts shall be considered goodwill without accepting any liability, unless agreed otherwise. In case it appears that any complaint has been submitted without proper reason and **Mardenkro** has provided services or supplied Goods on account of that, **Mardenkro** shall have the right to charge Customer for this according to the prices that are normally charged by **Mardenkro**.
8. Complaints with respect to invoices sent by **Mardenkro** must be submitted to **Mardenkro** in writing, stating the reasons, within fourteen days of invoice date.
9. A complaint submitted by Customer does not give Customer the right to suspend its payment, unless and to the extent that said complaint has been acknowledged by **Mardenkro** in writing.
10. Each Delivery is considered a separate transaction, which means that complaints in connection with a specific Delivery shall not affect previous or future Deliveries.
11. Goods may be returned only after the prior written consent of **Mardenkro**.
12. In case of returns **Mardenkro** has the right to charge administrative costs not exceeding 10% of the total invoice amount to Customer.

#### ARTICLE 10: RISK & LIABILITY

1. The risk of loss of or damage caused to the Goods that are the object of the Agreement shall pass to Customer upon Delivery of the Good to Customer, auxiliary persons or third parties engaged by Customer.
2. Customer is responsible and liable for its use and the use by other persons of the Goods supplied and/or Services performed. **Mardenkro** is never liable for, and Customer indemnifies **Mardenkro** from and against any accidents and/or damage resulting from the use of the Goods supplied and/or Services performed.
3. **Mardenkro** is never liable for any indirect damage caused to Customer or third parties including consequential damage (such as damage due to loss of profit, use of extra personnel, damage due to delay), immaterial damage and/or operating damage.
4. **Mardenkro** is not liable for any damage of whatever kind caused by **Mardenkro** acting upon incorrect and/or incomplete information provided by Customer, even in case Customer was not aware of this incorrectness and/or incompleteness.
5. Any liability is at all times limited to an amount not exceeding the amount to be paid by the insurer of **Mardenkro** in the case concerned, increased by the deductible that applies to the case concerned, or – in case the insurer of **Mardenkro** does not provide any cover – to the invoice amount exclusive of turnover tax or the total of that part of the Agreement to which the liability applies, in case it would be determined that it would owe damages for whatever reason. A series of connected incidents is considered one incident.
6. In case **Mardenkro** acknowledges in writing – or if it has been established in any other way – that an attributable default on the part of **Mardenkro** applies, **Mardenkro** will have the right within a reasonable term after Customer has referred to that default, to inform Customer that it will return the price paid by Customer or
  - a. that it will see to a new Delivery or Supply of the missing items free of charge or;
  - b. that it will remedy the performance provided free of charge, in which case replacement materials may or may not be new, at the reasonable discretion of **Mardenkro**.

In case **Mardenkro** performs within a reasonable term after said information this means that the Agreement was duly performed, and that Customer does not have any right to damages.

The provision of the previous sentence does not apply in case Customer has already rescinded the Agreement out of court, or has submitted a claim for rescission prior to the notification referred to in the

first sentence of this paragraph, and this claim has been granted. Prior to the performance referred to in this paragraph **Mardenkro** has the right to demand from Customer that it returns (if requested, retaining a sample if reasonable) the Goods with respect to which **Mardenkro** has been in default, before **Mardenkro** sees to the performance as required from **Mardenkro**.

7. In case **Mardenkro** engages any (non-) subordinates during the performance of the Agreement, the liability of **Mardenkro**, without prejudice to the provisions with respect to this in these General Terms and Conditions, is limited to the liability for the own acts and/or omissions on the part of **Mardenkro** and its (non-) subordinates. **Mardenkro** is not liable for damage caused by acts and/or omissions of its subordinates and/or non-subordinates, if said acts and/or omissions are considered intent and/or conscious recklessness.
8. Customer indemnifies **Mardenkro** – except in case of intent or conscious recklessness on the part of **Mardenkro** – from and against any claims of third parties for whatever reason, for compensation of damage, costs or interest in connection with the use of the Goods supplied or Services provided. **Mardenkro** is never liable for damage resulting from incorrect use and/or improper use of the Product supplied. Customer is obliged to strictly observe the instructions for use and safety instructions included in the Delivery of **Mardenkro**, and in case of resale, to provide said instructions to its customers in a language that said customers will understand. In case legal safety regulations in the country of use require higher demands than the instructions supplied by **Mardenkro**, said demands will take precedence over the instructions provided by **Mardenkro**, and Customer is required to observe said regulations. In case damage is caused in spite of this as a result of improper use and/or improper application of the Product by or on behalf of Customer, said damage shall be the risk and for account of Customer.
9. By way of derogation from the provision of the previous paragraph Customer shall indemnify **Mardenkro** from and against any claims of third parties to whom damage is caused in connection with the performance of the Agreement, in case Customer is active in a branch of industry in which standardization of Agreements by means of General Terms and Conditions including restrictions/limitations of liability is a general phenomenon, or in case **Mardenkro** enters the Agreement as part of said branch of industry, or in case **Mardenkro** enters into the Agreement with an enterprise from a different branch of industry that is regularly involved with the branch of industry in which **Mardenkro** is active, and in which the above standardization also applies.

#### ARTICLE 11: FORCE MAJEURE

1. Attributable default on the part of **Mardenkro** does not occur in case Customer is already in default in the performance of its obligations, or in case of force majeure on the part of **Mardenkro**.
2. In addition to those circumstances considered force majeure by law, force majeure shall include strike and/or illness of employees of **Mardenkro**, failure in performance and/or force majeure on the part of its suppliers, transporters or any other third parties involved in the performance of the Agreement, traffic stagnation, natural forces, war or mobilization, interference due to measures of any authority, fire and other accidents in its company, and other circumstances – foreseen or unforeseen – to the extent that the (continued) performance of the Agreement or part thereof cannot be reasonably demanded, and in addition to this, if the interference is reasonably expected to continue for a longer than reasonable time – taking into account all aspects of the circumstances – following the circumstance/circumstances that caused said situation. In addition to that force majeure exists in case it has reasonably been established that this interference will definitely prevent the performance of the Agreement or part thereof.
3. In case of force majeure as described above each of the parties shall have the right to rescind the Agreement entirely - i.e. in case force majeure is sufficiently substantial - or in part – being the part to which force majeure applies - in which latter case the parties are obliged to perform that part of the Agreement that has not been rescinded. In case of rescission on the basis of this paragraph, neither party shall be liable for damages vis-a-vis the other party with respect to the part of the Agreement that has been rescinded.
4. **Mardenkro** is entitled to receive from Customer payment for any Goods and/or Services which have been supplied to/performed for Customer until the time of rescission.



5. In case of an interference which is reasonably expected to continue for less than two weeks after the circumstance/circumstances referred to in the previous paragraph occurred, force majeure shall not apply, and in that case the term within which **Mardenkro** must deliver on the basis of the provision of article 5, paragraph 9, shall be extended without ensuing right or possibility for either party to rescind the Agreement, the above exclusively in case both parties are legal entities.
6. In this article attributable default also includes torts.

**ARTICLE 12: APPLICABLE LAW AND JURISDICTION**

1. Any Agreements entered into by **Mardenkro** are governed by Dutch law, to the exclusion – if it would otherwise apply – of the United Nations Convention on Contracts for the International Sale of Goods.
2. Any disputes that may arise between **Mardenkro** and Customer, and to which these General Terms and Conditions apply shall be submitted to the jurisdiction of the competent court in the territory of the District Court (Arrondissementsrechtbank) of Breda, the Netherlands, unless otherwise prescribed by imperative law, without prejudice to the right of **Mardenkro** to take legal action against Customer before a different competent court.

*version December 2012*