



**GENERAL CONDITIONS OF SALE AND DELIVERY  
OF MERISON (UK) Limited**

Definitions

In these General Terms and Conditions of Sale and Delivery (the 'General Conditions'),

- 'Merison' means the private limited liability company Merison (UK) Limited with its registered office in Otley, West Yorkshire (United Kingdom), and all of its affiliated legal entities;
- 'Customer' means any natural person with whom or legal entity with which Merison enters into an Agreement, negotiates on the formation of an Agreement or to whom or to which it makes an offer;
- 'Agreement' means any agreement that is formed between Merison and the Customer, any addition or other amendment thereto and any juridical acts to prepare and give effect to that agreement;
- 'Products' means all items that are the subject matter of an Agreement, including the related work.

**1 Applicability**

- 1.1 These General Conditions are part of all Agreements and apply to all related juridical acts of Merison and the Customer.
- 1.2 Merison expressly rejects the applicability of conditions or clauses of the Customer.

**Merison UK Limited**

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On all our transactions our General Conditions of Sale and Delivery are applicable.

## 2 Offers, formation of Agreements, quotations and specifications of Products

- 2.1 An offer or (price) quotation will never be binding on Merison, and will be regarded only as an invitation to place an order. The Customer will be bound by any order that it places. The Customer cannot derive any rights from manifest typing errors in an offer or (price) quotation.
- 2.2 An Agreement will not be formed unless Merison accepts an order from the Customer in writing or fulfils an order.
- 2.3 "In writing" in these General Conditions also means by fax or by e-mail.
- 2.4 All quotations by Merison of colours, numbers, measurements, weights, capacities and other specifications of the Products are issued with care. However, Merison does not warrant that variations will not occur in that respect. Samples, drawings, designs or material lists are only indications. If the delivered Products vary from the quotation of Merison or from the samples, drawings, designs or material lists to the extent that the Customer can no longer reasonably be required to purchase them, the Customer has the right to terminate the Agreement in relation to those Products within 24 hours after it discovers or could reasonably have discovered the variation, provided in all instances to the extent that such termination is reasonably necessary.
- 2.5 If an offer or (price) quotation does not lead to an Agreement, the Customer will return to Merison at its first request the offer, design, images, drawings and all other documentation supplied by Merison. The provisions of Article 14.3 will remain in full force.

## 3 Amendments and additions

- 3.1 Amendments and additions to any provision of an Agreement and/or the General Conditions will apply only if and insofar as Merison has recorded them in writing and only to the relevant Agreement. Arrangements that may have been made with or undertakings made by third parties hired by Merison for the performance of the Agreement will not be binding on Merison.

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3.2 Additional work will arise if the Customer wishes to make additions or amendments to the work that Merison is required to perform or the Products that Merison is required to supply under the Agreement and Merison is of the opinion that its obligations are increased or expanded thereby, even if the parties had agreed a fixed price. If Merison is of the opinion that additional work is involved, it will inform the Customer accordingly as soon as possible, advising it of the effects thereof on the price and the term within which Merison will be able to deliver the Services and/or Products. The Customer will be deemed to have agreed to the execution of additional work and to the related costs and other consequences unless it objects in writing immediately after the aforementioned notification by Merison.

## 4 **Prices**

4.1 All prices of Merison will be quoted in euros, exclusive of VAT, unless otherwise provided. Unless otherwise agreed in writing, the Customer will pay the costs of packaging, including the costs arising from the registration of packaging, the costs of load carriers and the other costs of shipment, import duties, export duties and excise duties as well as all other levies or taxes imposed in respect of the Products and their transport.

4.2 The prices are based on the circumstances applicable to Merison at the time of conclusion of the Agreement, including exchange rates, purchase prices, wage costs and national insurance premiums, freight rates, import duties, export duties, excise duties, levies and taxes that are imposed directly or indirectly on Merison or charged to Merison by third parties. If those circumstances change after the conclusion of Agreement, but before the delivery, Merison will have the right to charge the ensuing costs to the Customer.

4.3 If this price change leads to a price increase of more than 15%, the Customer will have the right to terminate the Agreement.

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## 5 Payment

- 5.1 Unless otherwise agreed in writing, the Customer will effectively pay the amounts charged to it to Merison in the currency referred to on the invoice within 14 days of the invoice date.
- 5.2 All amounts charged to the Customer must be paid without any discount or withholding. The Customer will not be entitled to any set-off. The Customer will not otherwise be entitled to suspend any payment obligation to Merison, unless the Customer submits the dispute to the court having jurisdiction pursuant to Article 17.3 within 14 days after the relevant obligations fell due.
- 5.3 If at any time Merison reasonably doubts the Customer's creditworthiness, Merison will have the right to require, at its discretion, that the Customer pay the agreed price or part of it upfront or provide adequate security for the amounts that Merison claims or will claim, whether or not they are due, before Merison renders any further performance.
- 5.4 If the Customer does not pay within the payment term, the Customer will be in default. In that case, all claims of Merison against the Customer on any basis whatsoever will fall due immediately.
- 5.5 The Customer will be obliged to pay a default interest on all amounts that have not been paid on the last day of the payment term, which interest will accrue from that date at the current statutory rate in the Netherlands plus a surcharge of 3%.
- 5.6 If the Customer is in default towards Merison, it will be obliged to reimburse Merison in full for extrajudicial and judicial costs. The extrajudicial costs to be reimbursed by the Customer will be at least 10% of the amount that has remained unpaid, subject to a minimum of EUR 250, to be increased by the VAT due thereon.

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Any amount that is received from the Customer will be applied first to pay any claims that Merison may have against the Customer for which Merison did not stipulate a reservation of title or pledge pursuant to Article 6. Any amount subsequently received from the Customer will be applied first to pay any and all payable interest and costs referred to in Articles 5.5 and 5.6.

## 6 Pledge and reservation of title

- 6.1 Notwithstanding actual delivery, title to the Products will not pass to the Customer until it has fully paid all amounts that are or will be payable by it to Merison under the Agreement.
- 6.2 Before title to the Product passes to the Customer, the Customer will not be entitled to rent out or grant any right of use to the Products, or to pledge or otherwise encumber them. The Customer will be entitled to sell or deliver Products of which Merison is the owner to third parties only to the extent that this is necessary for the purpose of the Customer's normal business operations.
- 6.3 If and as long as Merison is the owner of the Products, the Customer will inform Merison immediately in writing of any attachment levied (or likely to be levied) on the Products or of any other claim to the Products or any part of them. In addition, the Customer will inform Merison at its first request of the location of the Products of which Merison is owner.
- 6.4 In the event of an attachment, (provisional) suspension of payments or bankruptcy, the Customer will advise the attaching bailiff, the administrator or the trustee immediately of Merison's (ownership) rights. The Customer warrants that any attachment levied on the Products will be lifted immediately.
- 6.5 If and insofar as the Customer has not paid the agreed price for the delivered Products, and if the Customer has redelivered the Products delivered by Merison to a third party, the Customer will be obliged at Merison's first request to render all

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necessary cooperation in order to create a pledge for the benefit of Merison on all claims of the Customer against that third party on account of that re-delivery, without prejudice to Merison's other rights under the Agreement or the law.

## 7 Delivery term

7.1 Any delivery term quoted by Merison will be based on the circumstances applicable to Merison at the time of conclusion of the Agreement and, to the extent that it depends on any performance by the Customer or third parties, on the data provided by them. The delivery term will be observed by Merison to the fullest extent possible.

7.2 If Merison requires any data or aids for the performance of the Agreement that are to be supplied by the Customer, the delivery term can never begin before the date on which all of the necessary data or aids are in Merison's possession. If the Customer fails to provide certain information to Merison as a consequence of which the delivery term cannot be met if the agreed manner of transport is used, Merison will be compelled to select another method of transport (for example by airplane). The related extra costs will be charged to the Customer.

7.3 If the delivery term is exceeded, the Customer will not be entitled to any compensation on that account. Similarly, the Customer will not be entitled to termination of the Agreement unless the delivery term is exceeded to such an extent that the Customer cannot reasonably be required to maintain the relevant part of the Agreement. In that case, the Customer will be entitled to terminate the Agreement to the extent strictly necessary.

7.4 Merison will always have the right to deliver and invoice in parts.

## 8 Delivery and risk

8.1 The delivery and passage of risk of the Products will always take place by delivery to the address specified by the Customer.

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- 8.2 If the Customer does not take delivery of the Products at the agreed time, the Customer will be in default without notice of default being required and will be obliged to reimburse any damage arising as a consequence. In that case, Merison will be entitled to store the Products for the account and at the risk of the Customer or sell them to a third party. The purchase price, increased by the interest and costs, (by way of compensation), if appropriate reduced by the net proceeds from the sale of the Products to that third party, will still be due by the Customer.
- 8.3 The Customer may return the load carriers directly to Merison on delivery or may have them exchanged by Merison. If the Customer wishes to use neither opportunity, Merison will have the right to charge the load carriers to the Customer at the market price applicable at the time.

## 9 Force majeure

- 9.1 If Merison cannot fulfil its obligations to the Customer due a non-imputable failure (force majeure), the performance of those obligations will be suspended for the duration of the force majeure situation.
- 9.2 If the force majeure situation continues for one month, both parties will have the right to terminate the Agreement or part of it in writing to the extent this is justified in view of the force majeure situation.
- 9.3 In the case of force majeure, the Customer will not be entitled to any compensation, even if the force majeure leads to a benefit for Merison.
- 9.4 Force majeure will be understood to mean any condition beyond Merison's control that prevents the Customer from fulfilling its obligations to the Customer in whole or in part or due to which Merison cannot reasonably be required to fulfil its obligations, regardless of whether that condition was foreseeable at the time of conclusion of the Agreement. Besides natural disasters, fire, explosions, mobilisations, and similar conditions, those conditions include: strikes and lockouts, blockades, riots, stagnation or other problems affecting the production of Merison or its suppliers and/or the

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transport undertaken by itself or its suppliers and/or any devaluation, increase of import duties and/or excise duties and/or taxes and/or measures of any government authority as well as lack of any required government permit.

## 10 Inspection and complaints

- 10.1 On delivery of the Products, a close visual inspection must be conducted by or on behalf of the Customer to establish whether the Products at first sight conform to what has been agreed. The Customer must thus verify whether the right Products and right amounts have been delivered and whether the packaging is intact. Any complaints in this respect must be recorded in the transport documentation or be reported in writing to Merison within 24 hours.
- 10.2 Defects that could not reasonably have been detected within the term referred to in Article 10.1 must be reported in writing to Merison immediately after being detected, but within four weeks of delivery at the latest.
- 10.3 On detecting any defect, the Customer must cease using, handling, processing and/or installing the relevant Products immediately and otherwise undertake or refrain from undertaking anything that is reasonably possible to prevent any damage or further damage.
- 10.4 The Customer will render all cooperation that may be necessary for investigation of the complaint. If the Customer does not cooperate or an investigation is not possible for any other reason, the complaint will not be taken into consideration, without the Customer having any claim in that regard. If the complaints prove to be unfounded, the costs of investigating the complaint will be for the account of the Customer.
- 10.5 The Customer cannot derive any rights from the fact that a claim is taken into consideration.
- 10.6 The Customer will not be free to return the Products immediately after delivery or at any later time without Merison's prior consent. The reasonable costs of returning and

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the risk of transport will be carried by Merison only if complaints are made correctly, justifiably and in time.

10.7 If the Customer complains of defects in a Product correctly, justifiably and in time, the liability of Merison arising as a consequence will be limited to the obligations described in Article 11 with due observance of the other provisions of that Article.

## 11 **Obligations of Merison**

11.1 Provided that a complaint is made correctly, justifiably and in time in accordance with the provisions of Article 10 and it has been adequately demonstrated that the complaint is well-founded, Merison may, at its choice, (i) replace Products or parts that are found to be defective with new Products on return of those Products or parts, (ii) repair the relevant Products or parts properly, (iii) refund the agreed purchase price (or part of it) or credit the amount invoiced on return of the Products or parts that were found to be defective. By delivering any of the aforementioned performances, Merison will be fully discharged of its obligations.

11.2 If Merison delivers Products to the Customer that it has received from its suppliers, Merison will never be obliged to provide any warranty to the Customer beyond that which Merison can claim from its suppliers.

11.3 There will not be a right to any warranty if changes or repairs to the Products were made without Merison's prior permission in writing, the Products are used for purposes other than their intended purpose or the Products are otherwise handled or maintained improperly (including unsuitable packaging, incorrect or incomplete installation instructions, incorrect or incomplete user instructions, lack of or incomplete warning against certain uses and dangers and incorrect or incomplete maintenance instructions) if any other requirements included in warranty certificates were not observed and if the Customer is in default towards Merison. Damage due to normal wear and tear will also be excluded from the warranty. Only the Customer – and no third party – can have any claim against Merison under the warranty.

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## 12 Liability of and indemnity by Merison

- 12.1 Merison will not be liable under the law or any Agreement for any trading loss and/or consequential loss suffered by the Customer or a third party in respect of Merison's performance under the Agreement or the Products or their use, including any trading loss, environmental loss and intangible loss.
- 12.2 To the extent that it is established in court that Merison is liable towards the Customer, Merison's obligation to pay compensation will be limited to the amount of the price of the Product or part of it in respect of which that liability originated.
- 12.3 Merison will not be liable for any damage to the Products otherwise than with due observance of the provisions of Article 11.
- 12.4 To the extent that it is established in court that, despite the provisions of Articles 12.2 and 12.3, Merison has an obligation or further obligation to pay compensation, that obligation will be limited in any event to the amount that can be claimed under a liability policy taken out, plus the amount of the excess that comes for Merison's account pursuant to the policy conditions.
- 12.5 The provisions of the previous paragraphs will not affect Merison's liability pursuant to Title 3, Part 3, Book 6, of the Dutch Civil Code (on product liability).
- 12.6 Merison will not invoke the liability limitations set forth in this Article if and insofar as the damage arises directly from wilful acts or gross negligence on the part of Merison.
- 12.7 Unless the damage was caused by wilful acts/gross negligence on the part of Merison, the Customer will indemnify Merison against all third-party claims that are related directly or indirectly to the performance of the Agreement by Merison or to the Products or their use and will reimburse Merison for all damage, including costs of (legal) advice that Merison incurs due to such claims.

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## 13 **Default/termination**

- 13.1 If the Customer is in default or in any of the events stated in Article 13.2, Merison will be entitled to suspend the performance of any Agreement and/or terminate any Agreement in whole or in part.
- 13.2 In the event of a (provisional) suspension of payments, bankruptcy, cessation or liquidation of the Customer ('s business), all Agreements will have been terminated by operation of law unless Merison advises within a reasonable term that it requires performance of the Agreement or part of it.
- 13.3 The provisions of Articles 13.1 and 13.2 will not affect Merison's other rights under the law and the Agreement.
- 13.4 If an event occurs as referred to in (i) Article 13.1 or (ii) Article 13.2 respectively, (i) all claims of Merison or the Customer under the relevant Agreement(s) and (ii) all claims of Merison or the Customer will fall due immediately in full and Merison will be entitled to repossess the relevant Products. In that connection, Merison and its representative(s) will be entitled to access the land and buildings of the Customer in order to repossess the Products. The Customer will be obliged to adopt the measures necessary to enable Merison to exercise its rights.

## 14 **Intellectual Property**

- 14.1 The Customer will not acquire any Intellectual Property rights in relation to the Products.
- 14.2 The Customer will not be permitted to change or remove any brand markings or identifying marks affixed to the Products or their packaging. Similarly, the Customer will not be permitted to change or imitate the Products (or the brand markings or identifying marks affixed to them), including similar Products or a part of the Products, and it may not change or imitate the packaging.

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- 14.3 All items made available to the Customer (including images, the mental products and results thereof, drawings, diagrams, material lists and other documentation) remain under the ownership of Merison and may not be reproduced in whole or in part by the Customer and/or be made public or given to third parties by means of a print, photocopy, digital copy, microfilm or in any other manner whatsoever without Merison's express permission in writing.
- 14.4 Merison declares to the best of its knowledge that the Products do not infringe on any intellectual property rights of a third party applicable in the Netherlands. In the event of claims by a third party in respect of an infringement on such rights, Merison may replace or modify the relevant Product if necessary or terminate the Agreement in whole or in part. The Customer will have the right to terminate the Agreement only to the extent that it cannot reasonably be required to maintain the Agreement.
- 14.5 The Customer will inform Merison immediately of any claim of a third party with respect to an infringement of intellectual property rights in relation to the Products. In the event of such a claim, only Merison will be entitled, in part on behalf of the Customer, to conduct a defence, to take legal action against that third party or to enter into an amicable settlement with that third party. The Customer will refrain from all such measures to that extent that can reasonably be required from it. The Customer will cooperate with Merison in all cases.
- 14.6 The Customer will indemnify Merison against all damage (including costs of legal counsel) that Merison may incur due to an alleged infringement of intellectual property rights of a third party if Merison is alleged to have infringed those rights by using data, documents or items or anything else that the Customer made available to Merison for the performance of the Agreement.

## 15 Other obligations of the Customer

- 15.1 The Customer will provide Merison with all information that it needs in its opinion to perform the Agreement properly, will always do so correctly, in time and in the desired form and warrants that the information will be accurate, complete and reliable.

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- 15.2 The Customer will ensure that nothing on its part prevents the achievement of the agreed terms, including delivery, collection and installation times.
- 15.3 Without Merison's permission, the Customer will not make available to third parties any information, in the broadest sense, that Merison makes available in relation to the business, the business operations and/or the Products, and it will not use such information for any purpose other than the performance of the Agreement, subject to forfeiture of a penalty of EUR 75,000 due on demand, which penalty will be without prejudice to any obligation of the Customer to pay compensation.
- 15.4 Unless Merison has given its permission, the Customer will not make the property defined in Article 14.3 available to third parties and will not use it for a purpose other than the performance of the Agreement, subject to forfeiture of a penalty due on demand of EUR 50,000, which penalty will be without prejudice to any obligation of the Customer to pay compensation.

## 16 **Transfer of rights**

- 16.1 Merison will have the right to transfer the rights and obligations described in any Agreement with the Customer to third parties. In the event of any obligations of Merison being transferred, Merison must inform the Customer accordingly in advance, and the Customer will have the right to terminate the Agreement with effect from the future date on which the transfer will take place. Merison will not be obliged to pay any compensation in that regard.
- 16.2 The Customer will not be entitled to transfer its obligations under an Agreement to any third party without prior written permission from Merison.

## 17 **Applicable law, competent court**

- 17.1 These General Conditions and the Agreement will be governed by UK law.
- 17.2 The applicability of the UN Convention on Contracts for the International Sale of Goods (1980) ('CISG') is expressly excluded.

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17.3 All disputes that may arise in relation to the Agreement or these General Conditions will be submitted to the opinion of the competent court of Utrecht, the Netherlands, which has jurisdiction, unless otherwise provided under mandatory law, on the understanding that Merison will have the right to file claims, whether or not simultaneously, against the Customer with other courts of justice that have jurisdiction to hear such claims.

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