

GENERAL TERMS AND CONDITIONS OF SALE OF MEYER BURGER (NETHERLANDS) B.V.

1. Definitions

- a. **Meyer Burger:**
Meyer Burger (Netherlands) B.V. and its affiliated companies is the user of these general terms and conditions.
- b. **Other party:**
shall mean any natural person or corporation to whom Meyer Burger addresses its offers, as well as anyone who give Meyer Burger instructions, and/or those with whom Meyer Burger enters into an agreement and furthermore anyone with whom Meyer Burger has any legal relationship, and, in addition, the latter's representative(s), agent(s), successor(s) and heir(s).
- c. **Product:**
shall mean all products supplied to the other party under these general terms and conditions as well as all work and services that Meyer Burger renders to the Other party.

2. Applicability

- a. These general terms and conditions shall apply to all offers of Meyer Burger, all offers by the Other party that Meyer Burger accepted, agreements, all agreements arising from agreements or connected to that as well as all juridical acts, deliveries and work carried out by Meyer Burger, as well as future legal relationships to be entered into with Meyer Burger.
- b. Deviations from and additions to these general terms and conditions shall only be binding on Meyer Burger if agreed in writing.
- c. Meyer Burger expressly rejects any general terms and conditions used by the Other party and/or other conditions.
- d. If one or more provisions in these general terms and conditions should be void or should be nullified, the other provisions of these general terms and conditions or the agreements concluded between the Other party and Meyer Burger to which these conditions apply will remain unimpaired.
- e. The definition of the terms of transportation and delivery stated in any agreement and in these general terms and conditions shall be as stated in the latest English version of the Incoterms.

3. Offer

- a. All the offers and quotations of Meyer Burger are free of obligation, unless they contain a term for acceptance, in which case the offer shall lapse after expiration of such term.
- b. Any changes and/or undertakings whether made by Meyer Burger in writing or verbally, shall entail a new offer, and the previous offer shall lapse.
- c. All the offers of Meyer Burger are based on the executing of Meyer Burger of the agreement under normal circumstances, based on the data known to Meyer Burger and during ordinary working hours, unless expressly stated otherwise in writing.

4. Reaching agreement

- a. If the offer of Meyer Burger is free of obligation, an agreement shall come into being upon the receipt by Meyer Burger of a written acceptance of this offer or upon the commencing by Meyer Burger of the execution of the order.
- b. If the offer of Meyer Burger is limited by a term, an agreement shall come into being upon the receipt by Meyer Burger of the Other party's acceptance of this offer within the term set by Meyer Burger.
- c. If the Other party's acceptance deviates from the offer of Meyer Burger, it shall be considered a new offer by the Other party and a rejection of the entire offer of Meyer Burger, even if only minor deviations are concerned.

- d. Any orders accepted, additional arrangements, changes and/or undertakings made after the agreement, whether verbally or in writing, by the staff of Meyer Burger, representatives, sales staff or other intermediaries shall not be binding, unless confirmed by Meyer Burger in writing to the Other party.
- e. For a correct execution of an agreement Meyer Burger is authorised to call in third parties, the costs of which will be charged to the Other party in accordance with the submitted quotation. When possible, Meyer Burger will inform the Other party about this in advance.
- f. If an agreement has to be validated by competent authorities, the Other party is obliged to take care of the validation, licenses, permits and approvals that are required by all appropriate governmental authorities to ensure the performance of the agreement in accordance with its terms and conditions. In the event the Other Party breaches its obligations under this paragraph, it shall forfeit an immediately payable penalty of 0,3% (point three percent) of the total purchase price of the Products with a maximum of 1,5% (one point five percent) for each week this breach continues. This penalty does not affect the right of Meyer Burger to full compensation in accordance with statutory provisions. The Other party authorises Meyer Burger irrevocably, to perform all acts necessary to obtain the validation of the agreement and/or the licenses, permits and approvals in respect to the agreement. The costs for validation are for the account of the Other party. The Other party shall furnish to Meyer Burger written evidence from such governmental authorities of any such validations, licenses, permits, clearances, authorizations, approvals, registrations or recordings.

5. Changes

- a. In the event that during the execution of the agreement circumstances occur, which (threaten to) impede a proper execution of this agreement, the necessary measures will be taken by mutual consultation in order to effect an undisturbed continuation.

6. Prices and fees

- a. The prices quoted are net prices and do not include turnover tax, delivery costs, service costs and other government charges relating to the sale and/or delivery and/or execution of the agreement and/or third party charges; they are based on delivery ex warehouse/works, unless otherwise agreed in writing.
- b. The prices quoted are in Euro or in another currency agreed with Meyer Burger in writing; the Other party shall bear any exchange rate risk, unless otherwise agreed in writing.
- c. The prices Meyer Burger quotes are based on the exchange rates, purchase prices, wages, wage costs, national insurance contributions and government charges, freights, insurance premiums and other costs valid during the offer or upon entering into the agreement under normal circumstances.
- d. Meyer Burger is entitled to increase the price unilaterally and proportionally in case labour and raw material costs increase during the period the Other party neglects to fulfil its obligations in accordance with the agreement.

7. Taxation and charges

- a. In the event the Products have to be delivered outside the Netherlands, all taxes, rates and duties levied in the Netherlands in connection with the execution of the agreement, shall be paid by Meyer Burger, and Meyer Burger undertakes to reimburse the Other party for any amount(s) for which the Other party might be assessed on account of such taxes, rates and duties.

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- b. All taxes, rates, custom clearances, any other approvals, tariffs and duties levied outside the Netherlands in connection with the execution of the agreement, shall be paid by the Other party which undertakes to reimburse Meyer Burger for any amount(s) for which Meyer Burger might be assessed on account of such taxes, rates and duties. All official charges (taxes, social contributions, fees etc) levied on the personnel of Meyer Burger during the time they are occupied with the fulfilment of several activities in respect of the agreement, are for the account of the Other party.
- f. The Other party shall not be entitled to refuse to discharge or to suspend the discharge of its payment obligations on account of alleged defects in the Products or on any other account whatsoever.
- g. In the event of the Other party's liquidation, insolvency, petition for liquidation or moratorium on payments, the claims, on any account whatsoever, shall be immediately payable by the Other party.
- h. Meyer Burger is at all times entitled to require security, in whatever form, from the Other party for the performance of its obligations under the agreement. If the Other party does not meet Meyer Burger's request to provide security, Meyer Burger shall be entitled to dissolve the agreement or to suspend its obligations.

8. Delivery

- a. Unless otherwise agreed in writing, delivery times or delivery dates stated shall never be considered a fatal term.
- b. Any exceeding of the delivery times or delivery dates does not constitute the right for the Other party to rescind the agreement in full unless the excess amounts to more than 16 weeks. In the latter case the Other party may rescind the agreement and has a right, if applicable, to repayment of any payments made. Any right for compensation shall exclusively be governed by Clause 14.
- c. The delivery times and/or completion dates stated are based on the working conditions valid on concluding the agreement, the data known to Meyer Burger, and on the timely delivery of agreed upon additional equipment, consumables, spare parts, facilities and third party equipment, and the fulfilment of contractual conditions, which Meyer Burger ordered to carry out the agreement.
- d. Unless otherwise agreed in writing, delivery shall be made ex warehouse/works and at the times Meyer Burger sets in consultation, if possible, of which Meyer Burger shall notify the Other party in time. The Other party is enjoined to accept delivery of the Products delivered at the delivery time set, failing which all costs arising thereof (including storage charges and freight charges) shall be charged to in conformity with Meyer Burger's rates or the local rates.
- e. Meyer Burger is entitled to make partial deliveries. In that event Meyer Burger shall state the delivery times for each separate partial delivery. The provisions of this article 8 shall apply mutatis mutandis to partial deliveries.
- f. The risk of the Products shall pass to the Other party at the moment of delivery ex warehouse/works, even if Meyer Burger has not yet transferred the ownership of the Products.

9. Payment

- a. All the payments under this agreement shall be effected in EURO.
- b. Unless otherwise agreed in writing, payment by the Other party shall have to take place within thirty days of receipt of the invoice. This term is a deadline, on the expiry of which the Other party shall be in default. The Other party may not set off any alleged claims on Meyer Burger.
- c. Where payment is not made within the terms set forth in this article, contractual interest shall be owed at a rate of 1.5% a month, or the statutory interest should this be higher, with effect from the first day following expiration of the payment terms referred to in this article; part of a month shall be considered a full month.
- d. Where payment is not made within the terms set forth in this article, the Other party shall owe collection costs. The extra judicial collection costs are hereby set at 15% of the amount due with a minimum of EUR 250.
- e. Payments made by the Other party shall always be used first to meet all the interest and costs owed and subsequently for the settlement of claims under the agreement which have remained outstanding for the longest period of time, even when the Other party specifies that the payment relates to another claim.

10. Suspension and right of retention

- a. Subject to deviating mandatory statutory provisions, Meyer Burger is entitled to suspend its performance (including future partial deliveries) if the Other party fails to meet any of its obligations, or, if circumstances which have come to Meyer Burger's attention after the agreement was entered into, gives Meyer Burger good cause to fear that the Other party will not fulfil its obligations.
- b. If the Other party – in spite of a written demand containing a term of payment of at least seven days – does not fully or partially fulfil its obligations, Meyer Burger can exercise the right of retention against the Products and money of the Other party to which the execution of the agreement relates. Furthermore, Meyer Burger can sell the above products and deliver these to a third party and deduct the proceeds from the outstanding invoices. The Other party can then no longer exercise its right to delivery.

11. Warranty and claims

- a. Meyer Burger guarantees that the Products meets the specifically agreed upon quality as stated in an agreement during a period of 1 (one) year, with an exception for inkjet print head and ETP sources, for the latter the warranty period is 60 days or 1440 hours.
- b. In the event the delivery, unpacking, installation, commissioning and/or the final acceptance test is delayed by reasons not imputable to Meyer Burger, the warranty period shall last during the period of this delay with a total maximum of the guarantee-period of 18 (eighteen) months from the date of Meyer Burger's notification to the Other party that the Products are ready for shipment and dispatch.
- c. The period of warranty for products of suppliers of Meyer Burger, as from the date on which these products are accepted, is equal to the period for which the supplier of Meyer Burger is responsible and/or liable towards Meyer Burger.
- d. This guarantee does not cover faults or damages arising from natural wear and tear, faulty or careless treatment, use of NON-Meyer Burger approved parts, faulty and unauthorized commissioning, installation or setting into operation by the Other party or a third party, improper storage or unloading and unauthorized unpacking of the Products, improper or defective environmental circumstances and unauthorized relocation of the Products. Unauthorized modifications or additions of the Products, modifications of and/or additions of the software, and wrong maintenance or maintenance by unauthorized people shall invalidate this warranty.
- e. The Other party loses its rights with respect to this warranty clause if it does not give prior written notice to Meyer Burger specifying the nature of the lack of conformity of the Products within 2 (two) weeks after it has discovered it or ought to have discovered the lack of conformity.

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- f. The rights of the Other party with respect to this warranty clause are restricted to a lack of conformity caused by defects, faulty materials and failures in the Products or workmanship which appear under proper use, in conformity with the operational and first-line-maintenance manual.
- g. This guarantee shall not include consumables, wear and tear parts and/or spare parts. However, under this warranty the Other party is obliged to send a written order and Meyer Burger shall, after receipt of the order, free of charge, supply to the Other party the replacement of the parts as ordered, or, at Meyer Burger's option, repair such parts as ordered or have them repaired at Meyer Burger's order. For the repair-activities a warranty period of 3 (three) months is applicable. For replaced parts no additional warranty period is applicable, but the period mentioned under paragraph 11c will continue. Costs for travelling and housing directly connected hereto are for the account of Meyer Burger. Defective parts shall become Meyer Burger property as soon as they have been replaced. So far software is concerned, Meyer Burger shall remedy the errors in the design or implementation of the software or have them remedied at Meyer Burger's order to the best of its ability.
- h. In case the above mentioned defects and/or faults concern a part to be delivered by Meyer Burger not being a part of the in-line equipment, Meyer Burger reserves the right to send to the Other party a new or repaired part against prior receipt of the defective part. Meyer Burger shall solely exercise this right when the Other party is, or ought to be, capable to replace the part. In case the Other party insists that the replacement of such a part has to be done by employees of Meyer Burger, all travelling and housing costs including expenses and allowances are for the account of the Other Party.
- i. Defective parts under the warranty are to be returned to Meyer Burger within 30 (thirty) days after the defective parts have been replaced. If the defective part is not returned to Meyer Burger the claim becomes invalid.
- j. Besides the right of the Other party as mentioned in paragraph 11h, the Other party is not entitled to exercise any right, request or remedy.
- k. Meyer Burger will endeavour to provide the availability of spare parts for the Products during a period of 10 (ten) years, starting at the date on which the Products have been accepted by the Other party.

12. Retention of title

- a. Meyer Burger remains owner of the Products and, notwithstanding the disposal of the Products by Meyer Burger at the site of the Other party, the title of ownership of the Products is fully reserved to Meyer Burger as long as the Other party has not fully paid 100% of the total price and/or has not satisfied the demands of Meyer Burger in respect of a breach of the agreement by the Other party.
- b. The Products are mounted at the site of the Other party in such a manner that at any time, the Products can be separated without damaging the Products, from other items or products or real property. Meyer Burger is entitled to modify, or to instruct the Other party to modify, the manner in which the Products are fixed to the ground, to other items or Products if there is any doubt about the identity of the Products as a separate chattel.
- c. The Other party is obliged to comply with the instructions of Meyer Burger to prevent that the Products lose their identity as a separate chattel.
- d. As long as the title of ownership of the Products is reserved to Meyer Burger, the Other party is obliged not to remove the identification or mark of the Products showing: "This machine is the sole property of Meyer Burger, The Netherlands".

13. Force Majeure

- a. The Other party and Meyer Burger are released from responsibility for partial or complete non-fulfilment of their obligations and/or liabilities under the agreement, if this non-fulfilment is caused by circumstances of force majeure, namely:
 - fire, flood, earthquake or accident;
 - strikes or labour disputes;
 - war or other violence;
 - any law, order, proclamation, regulation, demand or requirement of any government or agency;
 - or any other act or condition whatsoever beyond the reasonable control of the parties, e.g. a negative travel advice of the Dutch Minister of Foreign Affairs for the country in which the site of the Other party is situated, and provided that the circumstances have directly affected the execution of the agreement. Parties shall be excused from performance at least to the extent of the prevention, restriction or interference.
- b. The party, for whom it has become impossible to meet the obligations of the agreement, is obliged to notify immediately in writing the Other party of the beginning and cessation of the circumstances. The party, for whom it has become impossible to meet an obligation of the agreement, shall use its best efforts to avoid or remove the cause of non-performance and whenever the cause is removed, shall give prompt notice thereof and shall continue performance with the utmost dispatch.

14. Liability

- a. Without prejudice to article 11, Meyer Burger shall never be liable for loss, unless this can be blamed on intention or gross negligence on its part or on the part of its executives.
- b. If, contrary to the contents of paragraph 14a, Meyer Burger would be liable for loss, the liability of Meyer Burger shall always be limited to direct damage to the Products and/or persons and this will never extend to any kind of special, incidental, indirect, consequential of punitive damage or loss, cost and expenses, including without limitation, damage based on lost goodwill, lost sales or profits, work stoppage, product failure, impairment of other goods or otherwise.
- c. In the event that Meyer Burger, contrary to the contents of paragraph 14a, would be liable for loss, the liability of Meyer Burger is furthermore limited to 5% (five percent) of the price for which the Other party purchased the Products, or the amount paid by the Other party in respect of the order.
- d. In the event that a final and binding judgment deems the provisions under paragraph 14c to be unreasonably onerous, the liability of Meyer Burger shall be limited to the amount that is paid out for that event under the liability insurance coverage taken out by Meyer Burger, plus the amount of the deductible applicable to this insurance coverage.
- e. The provisions under paragraphs 14b, 14c and 14d, only apply in so far as, pursuant to the law or the agreement (including the provisions of these general terms and conditions), the liability of Meyer Burger has not already been limited further than would appear from the mere application under these paragraphs 14b, 14c and 14d.
- f. The Other party is obliged to indemnify Meyer Burger against or compensate Meyer Burger respectively in respect of all third party claims for compensation of the loss, costs or interest for which the liability of Meyer Burger has been excluded in this condition in the relationship with the Other party.
- g. Meyer Burger shall never be liable for loss caused by work in respect of Products that do not belong to Meyer Burger's normal work and that is carried out by Meyer

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- Burger as a manner of service at the explicit request of the Other party. This work takes place for the Other party's account and risk.
- h. If the agreement concerns products of suppliers of Meyer Burger, the responsibility and/or liability will be limited to that for which that supplier is responsible and/or liable towards Meyer Burger. This provision only applies in so far as its application is more favourable for the Other party than the application of the above provisions.
- g. It is understood that Meyer Burger's liability under this article shall be limited to a maximum amount equal to 5% (five percent) of the price of the Product(s).
- h. The foregoing states the entire liability of Meyer Burger in connection with infringement of third party's patents by the Products supplied hereunder, and, except as stated in this clause, Meyer Burger will not be liable for any loss or damage of whatever kind (including in particular any incidental, indirect, special or consequential damage) suffered by the Other party or any other person in respect of the infringement of any patent.

15. Patent Indemnity

- a. Meyer Burger, at its own expense, shall defend any suit brought against the Other party so far as based upon a claim that the Products as such, directly incorporate and infringe any apparatus claim under any third party's patents in the country where the Products are delivered and shall indemnify the Other party against any final award or agreed upon settlement of damages or reasonable costs in such suit. This indemnity is conditional upon the Other party giving Meyer Burger prompt notice in writing of any suit for such infringement, full authority at Meyer Burger's option to settle or to conduct the defence thereof, and full assistance and co-operation in said defence.
- b. No cost or expense shall be incurred on behalf of Meyer Burger without its written consent. In the event that the Products are in such suit held to constitute infringement, Meyer Burger at its own election and its own expense may either procure for the Other party the right to continue the application of the Products and/or the use of the Products, or modify the Products so that it becomes non-infringing.
- c. Notwithstanding the foregoing, Meyer Burger shall not be obligated to defend against, and shall not be liable for, infringement of any patent claim covering combinations of the Products with any other product, whether or not supplied by Meyer Burger, or any method, process or products in or for which, or in the manufacture whereof, the Products may be used, or for patent infringement arising from compliance with the Other party's design, specification or instruction.
- d. Notwithstanding the foregoing, there shall be no indemnification by Meyer Burger with respect to any claim, loss, cost, damage, expense or liability in any of the following conditions:
- unless Meyer Burger shall have been given the opportunity to defend the matter and full cooperation in such defence;
 - if the claimed infringement is settled without the consent of Meyer Burger;
 - if the infringement results from the use of a Product delivered under an agreement that is modified by the Other party or is combined with a product not delivered by Meyer Burger where such infringement would not have occurred from the use of the Product alone as delivered under the agreement.
- e. The Other party shall indemnify Meyer Burger against any final award of damages or costs for infringements as defined in paragraph 15c and shall reimburse all costs incurred by Meyer Burger, in defending any suit for such infringement and if so requested, shall give full authority to conduct the defence thereof and full assistance and co-operation in such defence.
- f. Notwithstanding the foregoing, it is furthermore specifically understood that Meyer Burger is not liable for any claim or demand, based upon infringement or alleged infringement of any third party's patent, which claim or demand is, directly or indirectly, based upon the number of products manufactured by means of the Products process and/or the Products, irrespective as to whether such claim or demand alleges that the Products, or its use, infringes or contributes to the infringement of any such patent.

- i. It is expressly understood that by the sale of the Products no patent licence or licence to any other right of intellectual and/or industrial property, express or implied, is granted to the Other party or a customer of the Other party for the manufacture of any products by using Products.

16. Software

- a. Meyer Burger has developed and owns and has all intellectual property rights to the software for use in conjunction of the Products. The software is proprietary and confidential. Neither receipt nor possession thereof confers any right to copy, reproduce, reverse engineering, disclose or modify, in whole or in part, direct or indirect, any such programs, products or any related information without the express, prior and written authorization of Meyer Burger.
- b. Meyer Burger hereby grants to the Other party a personal, non-exclusive, non-transferable license ("License") solely to use the software in the Products and authorizes the Other party to use the software in machine readable form solely to establish the manufacturing process with the Products, i.e. solely to produce the products directly resulting from the manufacturing process for which the Products are designed. This License does not include the right to copy, reproduce or reverse engineering the software for any purpose whatsoever without the express, prior and written authorization of Meyer Burger nor does the License provide for any updates of the software which may, from time to time, be supplied to the Other party. The Other party is not entitled to sub-license the software. Meyer Burger shall supply one copy of the operational software for backup-purposes.
- c. In the event that the Other party breaches one or more obligations of this article, it shall forfeit an immediately payable penalty of € 500.000,- for each breach and each day the breach continues. This penalty does not affect the right of Meyer Burger to full compensation in accordance with statutory provisions.

17. Intellectual Property Rights and Confidentiality

- a. The Other party recognizes the confidential nature of the details of each agreement, the know-how, the information, the advice, the data, the drawings, the construction, the software and the documentation with respect to the Products or relative to the respective system ("Confidential Information")
- b. All intellectual property rights e.g. patents, copyrights, data protection, trademarks, designs, models, know-how and all proprietary and/or commercial rights and trade secret rights belong to Meyer Burger. No agreement unless and restricted to explicitly in writing, does contain an transfer of any of these rights.
- c. The Other party shall ensure that it shall neither directly nor indirectly make available to any third party the Confidential Information and/or the intellectual property rights as mentioned under b (including methods or concepts utilized therein), without the prior written approval by Meyer Burger.



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The Other party shall insure that it shall desist from any breach of said intellectual property rights as mentioned above.

The Other party acknowledges its obligation and agrees not to disclose the Confidential Information and/or the intellectual property rights as mentioned above under b (including methods or concepts utilized therein) to anyone except the employees of the Other party to whom such disclosure is necessary to the use only for the purpose of operating the Products under the agreement, and for no other purpose whatsoever, provided they are obliged to undertake the same confidentiality obligations.

- d. The parties shall not use the Confidential Information and/or the intellectual property rights as mentioned under b for any purpose other than the purpose for which it was made available by the Other party and shall not apply it in any way other than as indicated by the Other party.
- e. This article does not apply in the event that the Confidential Information:
 - (i) was already in the possession of the Other party before it received the Confidential Information from Meyer Burger;
 - (ii) on the date of the disclosure or after that comes to the attention of the public, other than by provision by the Other party of the Confidential Information;
 - (iii) was obtained by the Other party of a third party, Meyer Burger not having any influence on this;
 - (iv) has to be disclosed pursuant to a judicial decision.
 - (v) this article continues to be in effect after the termination of the agreement. The burden of proof that a situation as mentioned under this sub d occurs, is for the Other party.
- f. In the event that the Other party breaches one or more obligations of this article, it shall forfeit an immediately payable penalty of € 500.000,-- for each breach and each day the breach continues. This penalty does not affect the right to full compensation in accordance with statutory provisions.
- c. In the event the Other party is situated within the European Union all disputes arising from this agreement shall be exclusively brought before the competent court of 's-Hertogenbosch, the Netherlands. In the event the Other party is based and/or has its registered offices outside the European Union, all disputes arising out of any agreement between Meyer Burger and the Other party, will be exclusively resolved by arbitration. The arbitration proceedings will be exclusively brought before the National Arbitration Institute in Rotterdam, the Netherlands (NAI) including the arbitration proceedings for an urgent provision. The rules and regulations of the National Arbitration Institute will be applicable on the proceedings and on the arbitral judgement. The language will be English.
- d. In the event of a (threatening) dispute Meyer Burger is entitled to instruct one or several experts to carry out an assessment at the Other party.

18. Export Control Regulations

- a. Meyer Burger's obligation to deliver the Products and render the services shall be subject to the condition precedent that required export licenses are issued (if any) and that no other mandatory restrictions exist under Dutch, European, U.S. or any other applicable export control regulations that impede delivery of the Products and rendering of the services.
- b. The Other party undertakes to comply with all export control laws and regulations applicable to him, in particular the export control laws and regulations enacted by The Netherlands, the European Community and the United States of America. In particular, the Other party undertakes not to directly or indirectly export or re-export the Products to any country for which such export may be prohibited by the aforementioned regulations. Failure to comply strictly with all laws relating to embargoes, sanctions, export and re-export applicable to the Other party shall entitle Meyer Burger to declare the contract avoided.

19. Governing law and Disputes

- a. The agreement, its interpretation, its performance or any breach thereof, and all agreements which will be executed as a result of the agreement, shall be exclusively governed by the laws of the Netherlands.
- b. The provisions of the Vienna Convention do not apply, nor will any future international regulation concerning the purchase of movable property, the operation of which can be excluded by the parties.