



## General Conditions of New Citizen Design BV

### A. General Part

#### 1 Applicability of these General Conditions

- 1.1 These conditions apply, to the exclusion of any other conditions, to all offers, agreements and deliveries regarding any and all activities and services (including sale and delivery of design goods, consultancy and 'design thinking') offered by New Citizen Design, a company registered at the Dutch Chamber of Commerce in Rotterdam under nr 74749765.
- 1.2 The following definitions are used in these General Conditions:
  - a. NCD New Citizen Design, a company established in Rotterdam, The Netherlands
  - b. Client NCD's counterparty
  - c. Parties NCD and Client
- 1.3 These General Conditions consist of a general part (Part A), that is applicable on all offers, agreements and deliveries regarding any and all activities and services by NCD, and in addition special clauses apply to respectively sale and delivery of (design) goods (Part B) and to consultancy, design thinking or any other activity/service, not being sale and delivery of (design) goods (Part C).

#### 2 Offers and agreements

- 2.1 An offer or quotation will be without commitment, unless it relates to a Consumer Purchase, and will be valid during the specified term or while stocks last.
- 2.2 Agreements between NCD and the Client will be concluded on written confirmation by NCD, including confirmation by e-mail. An automatically generated electronic order confirmation will not serve as such confirmation. NCD reserves the right to refuse an order.
- 2.3 All orders are, with the express exclusion of Articles 7:404 and 7:407 paragraph 2 of the Dutch Civil Code, accepted and will be carried out by NCD only, even if it is the express or implied intention that an order will be carried out by a specific person.
- 2.4 NCD will have the right to make use of persons as employees, interns, subordinates, directors, partners, shareholders, advisors, intermediaries, agents and (other) third parties in the performance of the agreement. Any and all rights and claims stipulated in these Conditions and in any further agreements for the benefit of NCD will equally apply to any of these persons who are therefore entitled to invoke these General Conditions.

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### 3 Dutch law, competent court and expiration clause

- 3.1 This Agreement is governed by Dutch law, also if an obligation is performed abroad in full or in part or if the Client has its place of residence there. The legal relationship between NCD and the Client as well as those who make use of NCD's services, shall (therefore) be subject to Dutch law. The applicability of the Vienna Sales Convention is excluded.
- 3.2 In the event of any dispute, the court of Rotterdam, The Netherlands, shall exclusively be the competent court.
- 3.3 Any claim against NCD will expire after a period of 12 months. This period of time starts on the day after the day that the claim was due, or the day Client should have known about the existence of the damage.
- 3.4 The parties will submit a dispute to the court only after they have made every effort to settle the dispute in consultation.

### 4 Other provisions

- 4.1 The Dutch text of these General Conditions will at all times be decisive in the interpretation of these General Conditions.
- 4.2 Amendments and/or additions to these General Conditions will be valid and applicable only if recorded in writing and agreed upon. If NCD uses additional conditions or any provisions that conflict with these General Conditions, that will not affect the validity and applicability of other provisions of these General Conditions.
- 4.3 These General Conditions are a translation of the *Algemene Voorwaarden van NCD*. In the event of any discrepancies between these two Conditions, the Dutch text will prevail.

#### **B. Conditions applicable with regard to the sale and delivery of (design) goods:**

**The abovementioned conditions Part A (General Part) are accordingly applicable and are expressly considered to be inserted and repeated here.**

### 5 Change in circumstances and force majeure

- 5.1 If the prices of raw materials or wages, import duties, taxes or other external costs increase after the conclusion of the agreement (whether or not due to currency fluctuations), NCD will have the right to adjust the purchase price to that increase
- 5.2 NCD must inform the Client of such a circumstance as soon as possible, after which the Client will have the right to dissolve the agreement within a period of eight (8) days, unless the increase is due to a statutory price increase.
- 5.3 If NCD is unable to perform the agreement due to an event of force majeure, NCD will have the right to dissolve all or part of the agreement or to suspend its obligations until the force majeure situation has ended. The Client is then obligated to pay for any products already delivered.

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## **6 Delivery**

- 6.1 Specified delivery and other terms are stated for information purposes only and will not be of the essence, unless otherwise expressly agreed in writing. If a term is exceeded, the Client must therefore give NCD written notice of default.
- 6.2 If NCD requires information from the Client for the performance of the agreement, or if full or partial payment in advance has been stipulated, the delivery term will not commence until NCD has received the correct and full information or the payment in advance.
- 6.3 Orders will be delivered carriage paid only if that was expressly agreed. If delivery is not carriage paid, NCD will have the right to charge freight costs.
- 6.4 Delivery will take place the moment the products leave NCD's storage room or that of its agent. The risk in the products delivered will pass to the Client on delivery, regardless of the agreements made between NCD and the Client regarding transport and insurance.
- 6.5 If the Client refuses to take delivery, NCD may charge him the resulting costs. In that case NCD will also have the right to dissolve the agreement, without prejudice to his right to claim full damages.

## **7 Retention of title**

- 7.1 All products delivered will remain NCD's property until the Client has fulfilled all his obligations towards NCD under the agreement.
- 7.2 The Client may sell the products that have remained NCD's property pursuant to this clause to third parties only in the context of the normal conduct of its business.
- 7.3 If the Client fails to fulfil its obligations under an agreement concluded with NCD and NCD has good reason to believe that the Client will fail to fulfil its obligations, NCD will have the right to take back products delivered from the Client or from third parties that hold the products on behalf of the Client. In that case the Client must fully cooperate.

## **8 Dissolution and return of products**

- 8.1 The Client may amend or cancel an order only with NCD's prior consent. If NCD has already incurred costs or will incur costs as a result of the amendment or cancellation, NCD may charge those cost to the Client.
- 8.2 Products delivered may be returned only with NCD's prior written consent, whereby NCD will have the right to give instructions regarding the manner of shipment. The direct costs involved in the return shipment of the products in the context of this Article will be payable by the Client, unless otherwise expressly agreed in writing. NCD may wait before making the repayment until NCD has received the return shipment.

## **9 Payment**

- 9.1 NCD may at any time demand full or partial payment in advance or cash on delivery.
- 9.2 If products are delivered on account, the invoice amount must be paid within fourteen (14) days, without the Client being entitled to any discount or setoff.

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9.3 If NCD has not received (full) payment at the end of the payment period, the Client will be in default and will owe interest equal to the statutory interest rate that applies to business transactions. All costs incurred by NCD in connection with late payment, such as procedural costs and judicial and extrajudicial costs, including the costs of legal assistance, bailiffs and debt collection agencies, will be payable by the Client. The extrajudicial costs are set at a minimum of 10% of the invoice amount, subject to a minimum of € 150, excluding VAT.

## **10 Right of suspension and dissolution**

- 10.1 In addition to the provisions regarding force majeure and the provisions of Article 8, NCD will have the right to suspend (in full or in part) the performance of its obligations under all agreements that exist between the parties or to dissolve those agreements in full or in part without any notice of default or judicial intervention being required:
- a. if the Client is in default or NCD has good reason to believe that the Client will not perform its obligations in full and/or in time;
  - b. In the event of liquidation, a suspension of payment, a petition for a suspension of payment, bankruptcy or debt rescheduling, or any other circumstance as a result of which the Client can no longer freely dispose of its capital; or
  - c. if circumstances occur as a result of which it is impossible to perform the agreement or NCD cannot reasonably be required to continue the agreement in an unamended form.
- 10.2 In the cases referred to in paragraph 10.1 any obligations of the Client will furthermore fall due immediately and NCD will not be required to pay any damages.

## **11 Complaints**

- 11.1 NCD will do its best to supply products which meet the customer requirements and standards that can reasonably be set at the moment of delivery and for which they are intended in the event of normal use. If applicable, guarantee provisions of suppliers and third parties, such as producers and importers, will apply to the products supplied by NCD.
- 11.2 In the event of use outside the Netherlands, the Client itself must verify whether the products are suitable for use there and whether they meet the conditions and the applicable statutory and other requirements.
- 11.3 The Client will be required to inspect the products delivered immediately after receipt. Any defects established must be reported to NCD in writing, stating the reasons, within ten (10) days or in the case of external defects immediately.
- 11.4 If it has been proven that a product is not in conformity with the agreement and the complaint was filed in a timely manner, NCD may, at its option, replace the product in question, arrange for repairs, or refund the invoice price plus any shipping costs paid.
- 11.5 All data, designs and images regarding colours, materials, dimensions and finishing will be for information purposes only. Divergences will not be reason for rejection, discount, dissolution of the agreement or damages if such divergences are minor.

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## **12 Intellectual property rights**

- 12.1 The Client expressly acknowledges that all intellectual and/or industrial property rights in respect of the products, materials and information made available to the Client by NCD, including samples, packaging, labels and designs (and their appearance), the composition and/or specifications of samples, products and semi-finished products, as well as technical and commercial know-how, models, moulds, designs and patterns, vest in NCD, its supplier or other parties entitled.
- 12.2 If and insofar as NCD manufactures products or packaging on the basis of express instructions given by the Client, such as specifications, designs, sketches, models or patterns provided by the Client, the Client warrants that no third-party rights will be infringed. The Client indemnifies NCD against any third-party claims in this context and will reimburse all costs incurred by NCD in connection with such claims.

## **13 Liability**

- 13.1 NCD will not be liable for damage/loss caused:
- by incompetent use of the products delivered or use for a purpose other than that for which they are suitable by objective standards;
  - because NCD used incorrect or incomplete data provided by or on behalf of the Client;
  - third parties engaged in a performance of the agreement at the Client's request or with the Client's consent;
  - materials or services provided by third parties at the Client's request or with the Client's consent; or
  - misunderstandings, damage, delays or the improper receipt of orders and notifications due to the use of the Internet or any other means of communication (whether or not electronic).
- 13.2 Only direct damage/loss attributable to NCD will qualify for compensation. Any and all liability for indirect damage/loss, including but not limited to consequential damage/loss, loss of profits, damaged or lost data or materials, and loss of proceeds is excluded.
- 13.3 Under any circumstances, any claim will be limited to the invoice amount per unit sold for the delivery or partial delivery in question, on the understanding that that amount will never exceed € 10,000. The Client indemnifies NCD against any and all claims from third parties that incur losses in connection with the performance of the agreement and for the cause of which the Client is to blame.

### **C. Conditions applicable with regard to consultancy, design-thinking or any other activity/service (not being sale and delivery of (design) goods)**

**The abovementioned conditions Part A (General Part), together with clauses 7 (Payment) and 8 (Right of suspension and dissolution) are accordingly applicable and expressly considered to be inserted and repeated here.**

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## **Liability**

NCD will try to serve the Client to the best of its ability and knowledge. Under any circumstances, any liability of NCD is limited to direct damage/loss, caused by intent or wilful misconduct by NCD itself, and which liability is in any and all cases limited to the maximum amount of the invoices sent over the last six months.

**Rotterdam, May 14, 2019**

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Museumpark 25 / 3015 CB Rotterdam / The Netherlands /  
+31 10 843 6 843 / +31 (0) 6 28 66 66 00 / +31 (0) 6 10 62 75 43  
**KvK 74749765** / [info@newcitizendesign.nl](mailto:info@newcitizendesign.nl) / [www.newcitizendesign.nl](http://www.newcitizendesign.nl)