



Vehicle and marine climate systems

## GENERAL TERMS AND CONDITIONS

### 1. Definitions

- User: “the private companies with limited liability under Dutch law Eberca Holding B.V., Eberca B.V., and Techno Center Noord B.V., having their registered offices (and principal places of business) in Oud-Beijerland (Numansdorp), Oud-Beijerland (Numansdorp) and Oud-Beijerland (Sneek) respectively;
- Other Party: any natural or legal person with whom the User negotiates or enters into an agreement as referred to in article 2.1;
- Agreement: any agreement between the User and the Other Party, any change or addition to this agreement and any acts, legal acts included, in preparation or in execution of this agreement.

### 2. Applicability

- 2.1 These terms and conditions apply to every offer, quotation, Agreement, delivery, good, service, all legal relationships and all other acts, legal acts included, between the User and the Other Party, including negotiations and other precontractual situations, unless these terms and conditions are explicitly and unambiguously varied in writing.
- 2.2 These terms and conditions also apply for the benefit of persons for whom the User could be liable.
- 2.3 The applicability of the Other Party's terms and conditions is hereby explicitly rejected by the User, except to the extent that the User has accepted explicitly and unambiguously the applicability thereof in writing.
- 2.4 These terms and conditions always prevail over the Other Party's applied conditions.
- 2.5 Stipulations varying from these terms and conditions only apply, if in so far as confirmed in writing and unambiguously by the User.
- 2.6 An Other Party that has once traded with the User under these conditions is deemed to have agreed to the applicability of these conditions in the event of any subsequent transactions concluded between the parties

### 3. Offers

- 3.1 Every offer, quotation, estimate, drawing, catalogue or any other documents from the User is/are always voluntary and free of obligation, unless stated otherwise explicitly and unambiguously (by the User).
- 3.2 The User is not bound if the acceptance by the Other Party deviates from the offer, whether or not in relation to minor points, unless otherwise explicitly and unambiguously confirmed in writing by the User.
- 3.3 The User's quotations, drawings, catalogues or other documents will always remain the User's property and must be returned at the User's first request. Without the

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## Vehicle and marine climate systems

User's explicit written consent, they may neither be reproduced nor made available for inspection to third parties.

### **4. Agreement**

4.1. Subject to the provisions in 4.4, the Agreement is only entered into on the last of the following points in time:

- when the User has unambiguously confirmed in writing the obtained order;
- when the User has received any agreed advance payment;

4.2 The written confirmation from the User is deemed to fully and correctly reflect the agreement, unless the Other Party has forthwith protested against it in writing, stating reasons.

4.3 Additional arrangements or alterations are only binding if confirmed in writing by the User to the Other Party. The User may then reasonably adjust the delivery time. Any additional costs related to paragraph 3 will be borne by the Other Party.

4.4 In the event of Agreements for which no written acceptance or order confirmation is being sent, the invoice is deemed to fully and correctly reflect the Agreement, unless the Other Party has protested against it in writing, stating reasons, within two working days.

4.5 The User is only bound towards the Other Party if the Agreements have been entered into or confirmed by the User's persons who have representative authority according to the Chamber of Commerce.

4.6 If or after the agreement has been entered into, the User has the right, before continuing the performance, to suspend the performance and to claim as sufficient security from the Other Party that the latter fulfils all of its payment obligations and other obligations.

### **5. Implementation of the Agreement**

5.1 The User always has the right to call in third parties for the implementation of the agreement at its own discretion and need, thereby excluding articles 404 and 407 paragraph 2 of Book 7 Dutch Civil Code. The User determines the way of implementation of the agreement, unless otherwise explicitly and unambiguously agreed upon in writing.

5.2 If the User needs data from the Other Party in respect of the implementation of the Agreement, the implementation period will only start after the Other Party has made these data available to the User, accurately and completely.

5.3 If the data and documents as referred to under 5.2 are not provided by the Other Party in time, the User has the right to suspend the implementation of the Agreement and/or to charge the costs incurred by the delay to the Other Party, in accordance with the usual rates.

### **6. Prices**

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## Vehicle and marine climate systems

- 6.1 All the User's prices (including offers, price lists, catalogues, quotations, letters, etc.) in the broadest sense of the word are always without engagement and exclusive of Dutch VAT, unless otherwise explicitly and unambiguously confirmed by the User in writing.
- 6.2 After the Agreement has been entered into, but before the goods have been delivered, the User has the right to increase the price as a result of cost price increase factors, in particular because of – but explicitly not limited thereto – increase of exchange rates, purchase prices, freight rates, import or export duty, excise taxes, levies, taxes, raw material or of semi-finished goods, wages and other performances due to third parties by the User, irrespective of the predictability of these circumstances and without this entitling the Other Party to dissolve the agreement.
- 6.3 Unless stated otherwise in writing, the User's prices are always in euros and exclusive of the costs of packaging and transport, which costs are charged separately to the Other Party, unless otherwise explicitly and unambiguously agreed upon in writing.
7. **Payment**
- 7.1 Unless otherwise explicitly agreed upon in writing, payment will be made in cash against a receipt signed by the User, as proof of payment, or by crediting the bank account to be specified by the User, within the final deadline of thirty (30) days after the invoice date.
- 7.2 The value day on the User's bank statements is deemed to be the moment on which the User's bank account has been credited.
- 7.3 At all times, the User is entitled to claim payment in cash, advance payment or sufficient security for the payment to be made.
- 7.4 Every payment of the Other Party will first be applied towards the payment of costs, extra costs and judicial costs included, next towards the contractual, statutory interest due, commercial compound interest included, and finally towards the principal of the oldest invoice and the accrued interest.
- 7.5 The Other Party is not entitled to a discount or setoff of what it is due to the User.
- 7.6 The payment of the invoice includes the acknowledgment of the claim in question, unless the Other Party has explicitly and unambiguously challenged, stating reasons, the invoice in writing at the same time.
- 7.7 If the Other Party does not comply with its payment or security obligations, the User has the right, without prior notice of default, to suspend the performance of its obligations arising from this Agreement and all other Agreements entered into with the Other Party, without prejudice to its other powers under the law.
- 7.8 Complaints against the amount of an invoice do not suspend the payment obligations. The Other Party must not rely on section 6.5.3 (article 231 up to and including 247 of Book 6 Dutch Civil Code) and is also not entitled to suspend the payment of an invoice for another reason.



## Vehicle and marine climate systems

- 7.9 If the Other Party has not complied with its payment obligation within the agreed final deadline, the Other Party will be in default as from the due date, and a default interest in accordance with the statutory commercial interest, increased by 2%, will be due by the Other Party to the User on the invoice amount inclusive of Dutch VAT.
- 7.10 If the Other Party is in default with the performance of its obligations in time, all reasonable costs incurred to obtain an out-of-court settlement will be borne by the Other Party. The out-of-court costs will be set at a minimum of 15% of the principal due with a minimum of € 350 (exclusive of Dutch VAT) and are already due and payable as soon as the claim for collection has been passed on. If the User has incurred higher costs in reality and in reasonableness, the Other Party must compensate these costs. Any court costs and enforcement costs will also be borne by the Other Party. Interest as referred to in paragraph 9 on these collection costs due will also be due by the Other Party.
- 7.11 If the Other Party fails to perform its payment obligations, or does not perform them properly or in time, or fails to perform any other contractual or non-contractual obligation or does not perform it properly or in time, if its goods are seized, if suspension of payments or insolvency is applied for, if he or she dies or is placed under guardianship, proceeds to the cessation or (partial) transfer of his or her business, including the transfer of business into a company already existing or yet to be incorporated, or proceeds to the amendment of his or her business' objects, the Other Party will be deemed to be in default by way of law and the amount due to the User will immediately be fully payable without further notice or notice of default, irrespective of earlier instalment arrangements regarding the (payment) obligation, at a interest equalling the statutory commercial interest + 3%, to be calculated as from the invoice date, a part of a month counting as a whole month, over the amount due by the Other Party to the User. In that case, the User has the right to suspend the implementation of the agreement as well as any other agreements or to dissolve wholly or partly any agreement with the Other Party, at the User's discretion, without any obligation to damage compensation towards the Other Party.
- 7.12 If the User dissolves the agreement, the User has a claim for compensation. The damage will be set at 30% of the invoice value of the performance rendered or yet to be rendered by the User on the basis of the dissolved agreement, notwithstanding the power to claim the actual damage, should this be higher, from the Other Party.

## **8. Delivery**

- 8.1 The delivery time and repair time are free of obligations and indicated approximately. If the delivery time is established explicitly and unambiguously, this always takes place under the condition that the circumstances must be the same as when the Agreement was entered into, and that the goods will be delivered to the User in time. In the event of a delay because of a change in the said circumstances or because all or part of the goods have not been delivered to the User in time, the delivery time will be extended by the duration of the delay. If the term is exceeded, the Other Party must put the User in default in writing. The User must be offered a reasonable term in order to implement the Agreement still.



## Vehicle and marine climate systems

- 8.2 If the delivery time is exceeded, the Other Party has no right to compensation, (partly) dissolution of the Agreement or any right to suspend performance.
- 8.3 The Other Party undertakes to check the goods at their receipt, packaging included, for any deficiency and/or damage, or to carry this check out immediately after the User's announcement that the goods were made available to the Other Party at the User's premises.
- 8.4 Any deficiency and/or damage to the goods and/or the packaging must be specified by the Other Party immediately on the delivery note and/or the invoice and/or the transport documents and/or otherwise, and must be reported in writing and unambiguously to the User within 3 working days of the delivery of the goods or the goods having been made available to the User, failing which the Other Party will be deemed to have approved of the goods, and the right to reclaim pursuant to article 11 will have lapsed for the Other Party.
- 8.5 If the goods are not purchased by the Other Party after the delivery time has lapsed, the goods will be available and stored at the Other Party's account and risk. The purchase price increased by all interest and costs remains to be due by the Other Party.
- 8.6 Delivery takes place ex works of the Other Party, or to a place expressly agreed upon in writing by the parties.
- 8.7 The risk of loss, damage or depreciation in respect of the goods to be delivered passes on to the Other Party immediately after delivery. Delivery is deemed to have taken place as soon as the User has notified that the goods are ready for dispatch. Goods are deemed to have been delivered irrespective of the User's obligations to comply with fitting and installation obligations.
- 8.8 Deliveries elsewhere than "ex works" and return shipments also take place at the Other Party's account and risk.
- 8.91 Unless otherwise agreed upon in writing, the goods that have been handed over to the User for processing, repair or inspection remain at the Other Party's risk.
- 8.10 The User has the right to deliver in parts and to invoice the part deliveries separately.

## **9. Transport and risk**

- 9.1 The transport and the way of transport, dispatch, packaging and suchlike in the broadest sense of the word is determined by the User with due care. The Other Party always bears the risk for the transport, dispatch, packaging and suchlike, and the costs thereof will always be charged separately to the Other Party, unless otherwise explicitly and unambiguously agreed upon in writing.
- 9.2 Any other and/or specific wishes from the Other Party regarding the transport and/or dispatch will also be fully for the account and risk of the Other Party.
- 9.3 The Other Party is always obliged to adequately insure itself the risk of transportation of the goods.

## **10. Assembly**

- 10.1 If the implementation of an Agreement implies that the User must carry out assembly work in a workplace or at a site that belongs to or has been made available to the Other Party, the Other Party vouches for the reliability of the workplace or site and other necessary provisions. The Other Party then sees to it that:
- As soon as the User arrives on site, the assembly work can begin;
  - The User will be given the opportunity to carry out the work at all times, during and outside normal working hours, where the point in time situated outside normal working hours will be agreed upon between the User and the Other Party;
  - Suitable facilities are present in order to carry out the assembly properly;
  - The User has free access to the place where the assembly must take place, in combination with the suitable transport;
  - The User may have lockable storage spaces at its disposal for its material, equipment and other items;
  - The necessary auxiliary workers, auxiliary equipment and materials, gas, water, electricity and lighting will be made available to the User in time at no costs, in the right place;
  - All the necessary safety and other precaution measures have been taken and will be maintained;
  - The goods sent for the assembly are available at the right place in order to carry out the assembly.
- 10.2 If the Other Party does not comply with the conditions in paragraph 1, due to which a delay is caused, the delivery time will be extended to the duration of the delay and the costs reasonably incurred in that respect by the User will be charged to the Other Party.

## **11. Complaints**

- 11.1 Complaints about the goods delivered by the User or performed work or services or the invoices or rather the wording of invoices must be reported immediately to the User by phone, and furthermore must be submitted to the User by giving reasons in writing within due time, anyhow within 3 working days, at the risk of forfeiting all claims. The Other Party undertakes to meticulously check the goods delivered by the User for any deficiencies, as referred to in articles 8.3 and 8.4.
- 11.2 The term of article 11.1 begins to run from the moment that the goods have been delivered, the work or services have been completed or from the invoice date.
- 11.3 In the event of a complaint, the delivery of each separate good must be regarded as a separate Agreement, provided that complaints can not relate to other goods that were delivered at the same time or earlier (or later).
- 11.4 After the term referred to in paragraph 2 has lapsed, the Other Party will be deemed to have approved of the performance or invoice or both referred to in paragraph 1.
- 11.5 Complaints being considered well-founded do not give the Other Party a right to





## Vehicle and marine climate systems

compensation. The Other Party is entitled to the fulfilment of the agreed performance.

- 11.6 The return of the delivered goods is only possible after prior written consent from the User and must take place in the original packaging, always carriage paid and furthermore under the conditions to be determined by the User.
- 11.7 In the event that the Other Party fails or partly fails to comply with the obligation from the Agreement entered into between the parties, or does not comply with it in time, the User is not obliged to provide the guarantee.

### **12. Guarantees**

- 12.1 In respect of goods that the User has bought from third parties, and with regard to all Agreements that will be implemented by third parties on the instructions of the User, the User is not obliged to provide any more far-reaching guarantee than the guarantee that the User itself has obtained from the third parties involved in this respect, and if and insofar as the third party involved also actually honours the guarantee towards the User. At the Other Party's written request, the User makes the contents known of the guarantee provisions used by the said third parties towards the User.
- 12.2 In respect of other goods, as well as the fit-out work – also if a good has been made out of several goods - a guarantee term of 12 months applies as from the day of delivery, provided, however, that the cases mentioned below are not covered by the guarantee:
- Damage as a result of improper use or incorrect maintenance or subject to normal wear and tear;
  - Damage as a result of improper assembly;
  - Damage as a result of not following instructions for use strictly;
  - If work or repair is carried out by parties that were not authorized thereto by the User.

### **13. Liability**

- 13.1 The User will not be liable for damage of whatever nature, except in the case of intent or wilful recklessness of the persons charged with the management of User's business.
- 13.2 Any liability of the User is limited to the amount paid out under the professional liability insurance in the matter concerned, plus the amount of the deductible which under the policy conditions is borne by the insured party.
- 13.3 If, for whatever reason, no payment is made under the insurance, the above liability is limited to the maximum of the sum of the net invoice amounts settled or due by the Other Party to the User in respect of the Agreement, until a maximum of € 25,000.
- 13.4 Liability for indirect or consequential damage is excluded in all circumstances.



## Vehicle and marine climate systems

- 13.5 Claims to compensation will lapse if no action is brought before the court within one year from the date when the damage occurred.
- 13.6 The Other Party will indemnify the User against all claims of third parties which, by any means, are related to the work rendered for the Other Party and legal or other (advice) costs incurred with such claims, unless the said claims are the result of intention or wilful recklessness on the part of the persons charged with the management of User's business.
- 14. Retention of title**
- 14.1 As long as no full payment or consideration has been received by the User regarding the Agreement, which also includes the Other Party's obligation to compensate the damage on account of breach of contract, the goods supplied to the Other Party, which include treated or pre-treated, processed and/or unprocessed materials and parts, will remain the property of the User.
- 14.2 If the Other Party commits a breach of contract or gives the User good reason to believe that the Other Party is going to commit a breach of contract, the User will be entitled to repossess the goods supplied subject to retention of title. After the repossession, the Other Party will be credited for the market value which shall in no case exceed the initial transaction amount, decreased by the costs incurred for the repossession and by that what the Other Party still owes to the User regarding the breach of contract.
- 14.3 The User will further be entitled to repossess the goods supplied subject to retention of title if the Other Party has been wound up, has applied for or has been granted a moratorium, has been declared insolvent or if protective measures or measures to enforce judgment have been taken against the User.
- 14.4 As long as the ownership of the goods supplied subject to retention of title has not passed on the Other Party, the latter is not allowed to deliver or pledge these goods or grant a third party any other right thereon, and also undertakes to notify the User forthwith of any event that harms or may harm the User in its interest as owner of these goods.
- 14.5 The Other Party undertakes to store the goods subject to retention of title carefully and to insure and keep them conclusively, against any form of damage.
- 14.6 In the event of suspension of payments, bankruptcy or winding-up of the Other Party, the User has the right to dissolve all or part of the Agreement, without notice of default or judicial intervention, and to claim compensation. In these cases, any claim the User has against the Other Party is directly and fully payable. The User has the right to enter the site of the Other Party and to take possession of the goods that belong to it.
- 14.7 If the delivered goods have been processed or mixed by or at the Other Party's premises, the User will acquire the co-ownership of the new principal good at the initial invoice value (inclusive of Dutch VAT) of the (initial) goods delivered by the User.





## Vehicle and marine climate systems

14.8 If third parties seize the goods delivered subject to retention of title or wish to establish rights thereon or enforce them, then the Other Party undertakes to notify the User thereof in writing immediately.

14.9 If the Other Party does not comply with the obligations mentioned in this article, a penalty of 10% of the part of the initially agreed invoice value (inclusive of Dutch VAT) that has not yet been paid of the goods in question will be due by the Other Party for each violation.

### **15. Intellectual property**

15.1 The User retains the rights, defences and powers that accrue to it under the Copyright Act and other intellectual laws and regulations.

15.2 The User has to right to use the increased knowledge on the User's part by the implementation of the agreement for other purposes as well, to the extent that no strictly confidential information of the Other Party is being brought to the knowledge of third parties.

15.3 The Other Party always guarantees the User that the use of data granted by the Other Party or otherwise, will not result in the User acting in violation of statutory prescriptions or protected rights of third parties.

15.4 The Other Party will fully indemnify the User against any direct and indirect consequences of liability that third parties could enforce against the User under the violation of the guarantee mentioned in paragraph 3.

15.5 Any drawings, templates, lithos, designs, drafts, models, estimates, catalogues and suchlike, made by or on behalf of the User, will always remain the User's property and must be returned at the User's first request. Without the User's written consent, they may neither be reproduced nor made available for inspection to third parties.

### **16. Force majeure**

16.1 If it appears that the performance of an agreement by the User becomes inconvenient or impossible as a result of force majeure, the User is entitled to dissolve the agreement if it has not yet been implemented, by means of a written statement with a notification of the circumstances that make any further performance inconvenient or impossible (temporarily or permanently).

16.2 Force majeure means in any case, in addition to what has been and will be stipulated in the law and in case law, an event and/or circumstance beyond the User's control, even though it was foreseeable when the agreement was entered into, which renders the performance of the agreement permanently or temporarily impossible and, if not included therein:

- Civil war and riots, also abroad, entire or partial mobilisation;
- Epidemics;
- Fire and other malfunctions;
- Discontinuing the production of the specified product;
- Transport difficulties, strikes or other collective actions, blocking, exclusion;



## Vehicle and marine climate systems

- Theft or embezzlement from warehouses, workshops or means of transport of the User and similar circumstances and events;
  - Non-delivery or late delivery to the User by subcontractors;
  - Non-performance or late performance of the work contracted out by the User to third parties;
  - Import and export bans;
  - Measures taken by Dutch and/or foreign public authorities which render the performance of the agreement inconvenient and/or more expensive;
  - As well as any (other) circumstance due to which the normal course at the User's business is hindered, as a result of which the fulfilment of the agreement cannot reasonably be expected from the User.
- 16.3 If the User believes that the force majeure situation is temporary, it has the right to suspend the performance of the agreement until the circumstance which causes this force majeure no longer occurs. During the period of suspension, the Other Party is not entitled to dissolve the agreement.
- 16.4 The User is entitled to the payment of the performance which has been rendered in execution of the agreement in question, before the force majeure situation has appeared.
- 17. Final provisions**
- 17.1 All Agreements between the User and the Other Party and the other legal relationships as referred to in article 2.1 will exclusively be governed by Dutch law.
- 17.2 The applicability of the Vienna Sales Convention is excluded, unless otherwise explicitly and unambiguously agreed upon in writing by the parties.
- 17.3 The Rotterdam Court has exclusive jurisdiction to settle disputes between the parties, unless mandatory law determines otherwise. Nonetheless, the User has to right to submit disputes to the competent court of the Other Party's residence or domicile.
- 17.4 These general terms and conditions have been drafted in Dutch and in English. In the event of a dispute between the contents and the purport of both texts, the Dutch text will prevail.
- 17.5 These conditions were filed at the Chamber of Commerce and Industry .
- 17.6 The most recently filed version always applies to all Agreements and legal relationships, as referred to under article 2.1 between the User and the Other Party, as from the moment of filing the terms and conditions.

**THESE GENERAL TERMS AND CONDITIONS CAN ALSO BE FOUND ON [WWW.EBERCA.NL](http://WWW.EBERCA.NL)**



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