

Frederike Top Design

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ARTICLE 1 DEFINITIONS

1.1 _____ General Sales Terms & Conditions

“General Sales Terms & Conditions” are understood to mean the terms and conditions as set out in this document.

1.2 _____ We/Us

Frederike Top Design is using these general terms & conditions and will be referred to below as: “**we**” or “**us**”.

1.3 _____ The Other Party

The “Other Party” is understood to mean

- any natural person or legal entity to whom or which **we** address our offers
- the party that addresses offers to **us**
- the party with which **we** conclude an Agreement
- any party with which **we** have a legal relationship and, besides said party, its representative(s), attorney(s), successor(s) in title and heir(s)
- the party who accepted the General Terms & Conditions in any way

1.4 _____ Product

“Product” is understood to mean any product and design delivered by **us** to the **other party** under the applicability of these general terms, and all work and services performed by **us** for the **other party**.

1.5 _____ Project

“Project” is understood to mean all design assignments that result in a unique object, delivered by **us** to the **other party** under the applicability of these general terms, and all work and services performed by **us** for the **other party**.

1.6 _____ Agreement

The Agreement between **us** and the **other party** that is concluded at the time our offer is accepted by the **other party**, or at the time, **we** commenced the performance of the work relating to the Agreement.

1.7 _____ Confidential Information

“Confidential Information” is understood to mean any data, information, plans, specifications, drawings, documents and know-how disclosed to the **other party** within the scope of the Agreement or of the performance thereof. Furthermore, **confidential information** is understood to mean any data and information of third parties that the **other party** has received or heard within the scope of the Agreement.

ARTICLE 2 APPLICABILITY

2.1_____These general terms apply to:

- All **our** offers,
- All offers accepted by **us**,
- Offers made by the **other party**,
- All agreements,
- All agreements arising under or connected with agreements,
- All legal actions, deliveries and work performed by **us**,
- As well as any legal relationship to be entered into by **us** in the future.

2.2_____Any deviations from or additions to these general terms shall be binding upon **us** only if they have been agreed in writing.

2.3_____Any general terms used by the **other party** and/or other terms are explicitly rejected by **us**.

2.4_____If one or more terms set out in these general terms would be invalid or set aside, the remaining terms of these general terms or the Agreements concluded between the **other party** and **us**, to which these general terms apply, shall continue in full force and effect.

ARTICLE 3 QUALITY

3.1_____ **We** undertake vis-à-vis the **other party** to deliver a performance in compliance with the Agreement and to supply him with Products/ Projects of the specification, quality and quantity further specified in the quotation or offer.

3.2_____ **We** guarantee the quality demands to be made in all fairness, taking into consideration both the nature of the performance and the Products/ Projects.

3.3_____ **We** undertake vis-à-vis the **other party** to deliver Products/ Projects:
a. that are manufactured from reliable material and are of solid design.
b. the design and quality of which meet to all intents and purposes all demands applicable, which are specified in laws, acts and/or other government rules and regulations for such purpose and which are in force at the time the Agreement was concluded. The provisions set out in this paragraph also apply to the normal use of the Products.

3.4_____We do not guarantee that the Products/ Projects are suitable for the purpose intended by the **other party**, not even if **we** were informed of such purpose, unless the parties have agreed the contrary.

3.5_____All **our** Products/ Projects have been designed as objects of art, unique or in limited edition, and they are sold as such. The **other party** must consider these Products/ Projects as objects of art. Should these objects of art be used as functional objects, the demands customary to functional objects cannot be made on these Products/ Projects.
Based on the foregoing, we refuse to accept any liability arising as a consequence of another use of the Products/ Projects than as an object of art. We expressly draw the attention to the safety instructions accompanying each product.

ARTICLE 4 OFFERS AND QUOTATIONS

4.1_____All quotations and offers for Products made by **us** are without engagement and may always be revoked by **us**, even if they contain a period for acceptance.

4.2_____Phasing of implementation is applicable on all quotations and offers for Projects made by **us**, which include design process, development period, realization / production phase, transport -if the organization and site installation, and can by us be withdrawn, are without engagement and may always be revoked by **us**, even if they contain a period for acceptance. Once a project is started, the **other party** is obliged at all times to meet the costs for at least the design phase, regardless of the validity of the offers and bids, and whether the project will continue. The design fee is € 2,500.00 excl. travel, accommodation and expenses, unless otherwise agreed in writing.

4.3_____All offers made by **us** will remain valid for a period of 2 months. After this period, the offers are cancelled.

- 4.4 _____ Any alterations and/or representations, whether verbally or in writing that **we** made after the offer will mean that a new offer is made and the previous one is cancelled.
- 4.5 _____ All offers are based on the performance of the Agreement by **us** under normal circumstances, and based on the information known to **us** and during the customary working hours, unless explicitly indicated otherwise in writing.
- 4.6 _____ When the **other party** has already requested third parties to make offers earlier or simultaneously for the same Product, the **other party** shall inform **us** thereof whilst stating the name of such third party.

ARTICLE 5 CONCLUSION AGREEMENT

- 5.1 _____ The Agreement is concluded on the date of receipt by **us** of the acceptance of this offer by the **other party** within the period set by **us** in Article 4.3.
- 5.2 _____ If an acceptance by the **other party** deviates from **our** offer, this is a new offer of the **other party** and a rejection of **our** entire offer, even if the deviations are minor ones.
- 5.3 _____ Orders, (additional) agreements made, alterations and/or representations accepted after the Agreement by **our** staff, representatives, salesmen or other intermediaries will not be binding, unless they are confirmed by **us** in writing to the **other party**.
- 5.4 _____ We have the right to involve third parties for the proper performance of the Agreement, the costs of which involvement will be charged to the **other party** in conformity with the quotations submitted. If possible, **we** will inform the **other party** hereof in advance.

ARTICLE 6 ALTERATIONS

- 6.1 _____ If circumstances would present themselves during the performance of the Agreement, which obstruct or threaten to obstruct the proper performance thereof, the required measures will be taken in mutual consultation to achieve an undisturbed progress.
- 6.2 _____ In the event of an alteration of the Agreement, including the supply of a new/altered version of the Product/ Project, and/or an extension of the work to be performed by **us**, then it implies that the resulting additional costs up to a maximum of 20% of the working hours spent up to such date will only be payable by **us** if the extension is attributable to circumstances **we** were cognizant of or ought to have been cognizant of at the time the Agreement was concluded.

ARTICLE 7 PRICE

- 7.1 _____ All prices quoted by **us** have been based on the price-determining factors known at the time the offer was made. **We** always have the right to adjust the prices with immediate effect if a statutory price-determining factor should give rise to this.
- 7.2 _____ The prices quoted by **us** will not automatically be applicable for future orders.
- 7.3 _____ The prices quoted by **us** are exclusive of Dutch VAT, delivery costs (including packaging, transport and assembly costs), service costs and further costs relating to the sale and/or delivery of Products/ Projects or to the performance of the Agreement.
- 7.4 _____ The prices quoted by **us** have been quoted in Euros or any other currency agreed with **us** in writing; any exchange differences will be at the **other party's** risk, unless agreed otherwise in writing.
- 7.5 _____ The provisions set out in paragraph 7.1. also apply if the changes in price-determining factors as referred to in said paragraph are due to circumstances that could have been anticipated upon the conclusion of the Agreement.
- 7.6 _____ If circumstances occur that are attributable to the **other party**, due to which **we** had to incur expenses, the **other party** shall be under the obligation to reimburse **us** for such expenses. To the extent that they relate to man-hours made by **our** (hired) production team, a rate of € 70 per hour will be charged, and € 400.00 per half day for design work additional to the initial design process. Additional kilometres will be settled at a rate of € 0.28 per kilometre.

7.7 _____ Costs or services that are not covered by the offer made by **us**, incurred on the **other party's** instruction, will, if applicable, be reimbursed by the **other party**, in accordance with the rates specified in paragraph 7.5. The same applies for additions to or modifications of the Product/ Project requested by the **other party**, as well as additional representative activities by **us** in regard of the Product / Project at the request of the **other party**.

ARTICLE 8 DELIVERY

8.1 _____ Any delivery times and/or delivery dates stated will never be deadline delivery dates, unless agreed otherwise in writing. Consequently, in case of late delivery, the **other party** must declare **us** in default in writing, whilst duly observing a reasonable period.

8.2 _____ If the exceeding of a delivery date is not attributable to us, the **other party** can never claim any damages or dissolution of the Agreement.

8.3 _____ The times and/or dates of delivery stated have been based on the prevailing working conditions applicable at the time the Agreement was concluded and on the data known to **us**, and on the timely delivery of the material and/or component parts ordered by **us** for the performance of the Agreement.

ARTICLE 9 TRANSFER OF RISK

9.1 _____ All risks in the Products/ Projects to be delivered by **us** will pass on to the **other party** at the time the Agreement is concluded, or at the time of delivery whichever comes first.

9.2 _____ If a Product(-range) or item(s) is/are ordered with the purpose to offer this in any kind of store or selling-environment, there will be no right of return if the sales are disappointing.

ARTICLE 10 TRANSPORT

10.1 _____ Unless agreed otherwise in writing, the transport/dispatch will be organised by- and at the **other party's** account and risk.

10.2 _____ **We** will determine the manner of packaging of the Products/ Projects, unless agreed otherwise in writing.

ARTICLE 11 PAYMENT

11.1 _____ Unless agreed otherwise in writing, the **other party** must make 50% down payment after receipt of the invoice and 50% at least 24 hours prior to shipment of Product, unless agreed otherwise in writing. The production of the Product(s) will start upon receipt of the first instalment. These periods apply as deadlines, on expiry of which the Purchaser is in default. Settlement of claims the **other party** allegedly has on **us**, is excluded.

11.2 _____ Unless otherwise agreed in writing, payment of the Project by the **other party** is to be carried out as follows: Billing for design immediately after agreement on the Project. The follow-up process will be initiated only after a written agreement on the design. Payment by the **other party** of the follow-up process should take place in accordance with the prescribed deadlines in the offer. The development will be initiated upon receipt of the first installment. These periods apply as deadlines, on expiry of which the **other party** is in default. Settlement of claims the **other party** allegedly has on **us**, is excluded.

11.3 _____ Unless otherwise agreed in writing, payment of invoices is requested within 14 days after date of invoice.

11.4 _____ In the event of non-payment, a contractual interest will be payable equal to an interest percentage of 1.5% per month or the statutory interest if the latter is higher, in respect of which one part of a month will be counted as a full month, as of the first day after expiry of the payment term.

11.5 _____ If payment is overdue, the **other party** will owe collection costs. In this connection, the extrajudicial collecting costs are fixed at 15% of the amount payable with a minimum of €250.

11.6 _____ The **other party** does not have the right to refuse or suspend the fulfilment of its payment obligation based on alleged defects in the Product/ Project or for any other reason.

11.7 _____ In the event of winding-up, insolvency, the filing of a petition in bankruptcy or for a suspension of payment on the part of the **other party**, any claim **we** may have on the **other party** on any account whatsoever shall forthwith by due and payable.

11.8 _____ We have the right at all times to require that the **other party** provide security, in any form whatsoever, for the fulfilment of all its obligations under the Agreement. If the **other party** fails to act on our request to provide security, **we** have the right to dissolve the Agreement or to suspend our obligations.

ARTICLE 12 SUSPENSION AND RIGHT OF RETENTION

12.1 _____ **We** are authorized to suspend our performance (including future partial deliveries) if the **other party** fails to fulfil one or more of its obligations, or if circumstances that have come to **our** knowledge give **us** good reason to fear that the **other party** will fail to fulfil its obligations, except for mandatory provisions to the contrary.

12.2 _____ If the **other party** fails, in spite of having received a written warning containing a payment term of at least seven days, to fulfil its obligations in their entirety or in part, **we** may exercise the right of retention with respect to all of the **other party's** goods and moneys relating to the performance of the Agreement. Furthermore, **we** may sell the said goods and deliver them to a third party, and apply the proceeds to reduce the outstanding invoices. In such case, the **other party** can no longer exercise any right to delivery.

ARTICLE 13 RETENTION OF TITLE

13.1 _____ **We** shall retain the title to any Products/ Projects delivered and/or to be delivered by **us** until the **other party** has paid to **us** **our** claims arising under the Agreement, as well as the claims because failure in the performance of such Agreement.

13.2 _____ The **other party** shall not be permitted to sell, pledge or grant a third party any other right in respect of the goods delivered under retention of title, except within the scope of its normal conduct of business.

13.3 _____ The **other party** shall be under the obligation to store the goods delivered under retention of title with due care and as **our** recognizable property.

13.4 _____ If the **other party** fails to fulfil its payment obligations towards **us**, or if **we** have good reason to fear that it will fail to fulfil its obligations, **we** have the right to take back the goods delivered under retention of title. The **other party** shall be under the obligation to fully cooperate with such taking back, in default whereof the **other party** shall owe to **us** an immediately payable penalty of 10% of the amount owed by it.

13.5 _____ The **other party** shall be under the obligation to insure the goods delivered under retention of title and to keep them insured against fire, damage caused by explosion or water, and against theft, and to submit the policies of such insurance to **us** for inspection.

13.6 _____ The retention of title will be cancelled in the event of payment by a third party.

13.7 _____ Furthermore, the **other party** shall be obliged, upon our first request:

- a. to pledge to **us** any and all claims of the **other party** on insurance companies relating to goods delivered by **us** under retention of title in the manner specified in Article 239 of Book 3 of the Netherlands Civil Code.
- b. to cooperate in any other way with respect to reasonable measures that **we** wish to take to protect **our** title to goods, and which do not unreasonably hinder the **other party's** conduct of business.

13.8 _____ **We** are not obliged to indemnify the **other party** in any way against its liability as the holder of the item of property.

13.9 _____ The **other party** shall indemnify **us** for any claims of third parties against **us**, which may be linked to the retention of title.

ARTICLE 14 FORCE MAJEURE

14.1 _____ Force majeure does not constitute an attributable failure to perform on **our** part. If force majeure causes delay in or prevents the performance of the Agreement, both **we** and the **other party** have the right to dissolve the Agreement in writing without the **other party** being entitled to any compensation, except insofar as **we** would enjoy an advantage due to such dissolution, which **we** would not have had following the proper performance of the Agreement.

14.2 _____ Force majeure also includes any circumstance that occurred through no fault of **ours**, due to which the normal performance of the Agreement is prevented. Such circumstances of force majeure at any rate include:
loss, damage and/or delay during and due to transport, extreme absenteeism due to illness and wildcat strikes of the staff, import and export restrictions, actions/measures at customs, including the blocking, whether temporarily or permanently, of certain geographic areas, fire and other serious breakdowns in **our** company or at **our** suppliers, and national disasters.

ARTICLE 15 OTHER PARTY'S OBLIGATIONS

15.1 _____ In the event of reselling **our** Products/ Projects, the **other party** assumes the obligation to notify the customer of the safety instructions specified in these general terms and conditions, and of the warnings attached to the separate Products and to draw the customer's attention to the risks of using the Products/ Projects.

ARTICLE 16 LIABILITY

16.1 _____ Without prejudice to Article 17.2 of these general terms, **we** shall never be liable for any direct or indirect damage, unless it is a matter of intent or gross negligence of Frederike Top Design.

16.2 _____ **Our** liability towards the **other party** in case of late or non-performance will be restricted to the purchase price of the object of art with due observance of Article 16.5.

16.3 _____ **We** shall not be liable for any damage or loss, consequential or otherwise sustained by the **other party** or third parties due to the use of Products/ Projects supplied by **us** beyond the statutory obligations.

16.4 _____ In the event that **we** would, in contravention of Article 16.1, be responsible for any damage, **our** liability will always be limited to direct damage to property or persons and will never extend to any loss of profit or other consequential damage, including loss of income.

The said direct damage is exclusively understood to mean:

- a. the reasonable costs to be incurred by the **other party** to cause **our** performance to be in compliance with the Agreement. This damage will not be compensated, however, if the **other party** has dissolved the Agreement;
- b. the reasonable costs incurred for establishing the cause and scope of the damage, insofar as such establishment relates to the direct damage within the meaning of these terms;
- c. the reasonable costs incurred to prevent or limit the damage, insofar as the **other party** can prove that these costs have resulted in limiting the direct damage within the meaning of these general terms.

16.5 _____ In the event that **we** may, contrary to the provisions set out in Article 16.1, be liable for any damage, **our** liability shall further be limited to the price at which the **other party** has bought the item of property that caused the damage or the amount paid by the **other party** for the order, but at any rate at most up to the amount paid out by **our** liability insurer in the relevant case.

16.6 _____ Each liability lapses by the expiry of 1 year as of the date the contract is completed.

ARTICLE 17 INDEMNIFICATION

17.1 _____ The **other party** shall indemnify **us** against any third-party claims that are in any way connected with (the use of) **our** Products/ Projects, unless such claims would be the consequence of intent or gross negligence on **our** part. Particularly, the **other party** shall

indemnify **us** against third party claims that are the consequence of changes or additions that have been performed after delivery by **us** and for damage or loss due to wrongful or careless use of the Products/ Projects.

ARTICLE 18 DISSOLUTION

18.1 _____ If the **other party** fails to fulfil, or fails to fulfil in a proper and timely manner, in spite of warnings stating a reasonable period, any obligation, whether relating to payment or otherwise arising under any Agreement concluded with **us**, as well as in the event of a (the filing of a petition for) suspension of payment or bankruptcy, guardianship order or winding-up of the **other party's** business, **we** will have the right, without intervention of the court and without notice of default being required, to dissolve the Agreement or any part thereof by a mere written statement.

18.2 _____ Following the dissolution, mutual debts will be due for immediate payment. The **other party** will be liable for the damage sustained by **us**, including interest, loss of profit and transport charges.

18.3 _____ If the situation set out in Article 18.1 occurs and the **other party** would enjoy any advantage that it would not have had in case of proper performance, **we** are entitled to compensation of our damage, consisting of the amount of such advantage.

ARTICLE 19 INTELLECTUAL PROPERTY RIGHTS

19.1 _____ Any and all rights of intellectual or industrial property to all products developed or delivered under the Agreement, including drawings, pictures, designs, calculations, analyses, documentation, reports, offers, as well as preparatory material thereof, will exclusively be vested in **us** or in the licensors. The **other party** only acquires the rights of use and the powers explicitly granted under these general terms or otherwise, and for the rest the **other party** shall not reproduce the Products/ Projects, make copies thereof, show them and/or make them available to third parties or use them in another manner. By agreeing to these general terms and conditions, the **other party** acknowledges these rights.

19.2 _____ The **other party** only acquires those rights of use and powers that are explicitly granted under these general terms and conditions or otherwise. The delivery of **our** Products/ Projects does not include transfer of intellectual property rights.

19.3 _____ The **other party** shall refrain from multiplying or copying the Products/ Projects, nor shall he show them or make them available to third parties and/or use them in any other manner.

19.4 _____ The Product is exclusively intended for private use. Unless there is a written and signed agreement, the **other party** is not entitled to sell or alter the Product/ Projects, to give it another function or use it for other purposes than for the ones intended by **us**.

19.5 _____ The **other party** and **we** shall determine in mutual consultation in what way any title of the Product/ Projects and the name of "Frederike Top" and/ or "Frederike Top Design" will be used in any external communication such as invitations and publications. No publications are allowed without **our** permission.

19.6 _____ **We** guarantee that the Products/ Projects developed or delivered by **us** do, to the best of **our** knowledge, not constitute an infringement of any intellectual or industrial property rights held by third parties, and **we** shall indemnify the **other party** in this respect subject to the condition that the **other party** forthwith inform **us** of such claim and leave the proceedings in such action, including the making of amicable settlements, exclusively to **us**. The **other party** shall be obliged to provide **us** with the required support.

19.7 _____ If it has been established in a final and binding judgment of the court that a third-party claim of infringement of intellectual or industrial property rights is justified, **we** have the option, at **our** expense, (a) to acquire such rights that the **other party** may continue the use of the Product delivered by **us**, (b) to alter the Product in such manner that it does not constitute an infringement any longer, or (c) to dissolve the Agreement and refund the price paid by the **other party**, whilst deducting a reasonable user's fee.

19.8 _____ The **other party** warrants vis-à-vis **Us** that the material made available to **us** by it, such as drawings, pictures, calculations and designs, do not constitute an infringement of intellectual or industrial property rights, and it shall indemnify **us** against any and all third-party claims in this respect.

19.9 _____ This Article shall survive termination or dissolution of the Agreement.

19.10_____ The **other party** may only invoke the guarantee set out in this Article if it has fulfilled all its obligations vis-à-vis **us**.

ARTICLE 20 NON-DISCLOSURE

20.1_____ All Confidential Information will be treated as confidential by the **other party** and by **us** and this information shall not be disclosed or made available to any third party without the **other party's** written confirmation obtained in advance.

20.2_____ Confidential Information may be disclosed by either party only to those of its employees who reasonably need to take cognizance of the Confidential Information. The disclosing party will impose upon these employees the same duty of confidentiality as the duties arising under this Article 16.

20.3_____ The **other party** and **we** shall not use the Confidential Information for any other purpose than the purpose for which it was provided by the **other party** and shall not use it in any other manner than indicated by the **other party**.

20.4_____ This Article does not apply if the Confidential Information:

- a) was already in the receiving party's possession before such party received the Confidential Information from the disclosing party;
- b) becomes part of the public domain at the date of disclosure or thereafter in any other manner than the providing of this Confidential Information by the receiving party;
- c) was obtained by the disclosing party from a third party, without the disclosing party exercising any influence;
- d) must be disclosed under a ruling of the court.

20.5_____ This Article will survive termination of the Agreement.

20.6_____ In the event of its breach of any one or more obligations set out in this Article, the **other party** shall owe a penalty of €3,000.00 that will be due for immediate payment for each breach, and for each day a breach continues. This penalty does not affect the right to full compensation of damage in conformity with the statutory rules.

ARTICLE 21 DISPUTES AND APPLICABLE LAW

21.1_____ All Agreements to which these terms are applicable in their entirety or in part shall be governed by the law of the Netherlands.

21.2_____ Any disputes arising from offers and Agreements, howsoever named, shall be submitted to the court having jurisdiction in Amsterdam, the Netherlands, whilst excluding any other court.

21.3_____ In the event of a dispute or impending dispute, **we** have the right to have one or more experts conduct an expert examination at the **other party's** business.