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# TERMS OF DELIVERY IUPPITER B.V.

## ARTICLE 1. | DEFINITIONS

In these delivery conditions the following terms are used with the following meaning, unless it appears otherwise from the nature or scope of the clauses.

1. **Iuppiter:** Iuppiter B.V., who operates under these terms of delivery, is located at the address Brugwachter 11, 3034 KD Rotterdam, The Netherlands and registered with the Trade Register under Chamber of Commerce number 65522133.
2. **Buyer:** any natural person or legal entity with whom Iuppiter has concluded or intends to conclude an agreement.
3. **Consumer:** the buyer as meant in the preceding paragraph, a natural person not exercising a profession or operating a business.
4. **Agreement:** any agreement concluded between the buyer and Iuppiter with which Iuppiter is contractually bound towards the buyer for the delivery of the products against payment.
5. **Distance Contract:** an agreement as meant in the preceding paragraph concluded between Iuppiter and the consumer without the simultaneous physical presence of Iuppiter and the consumer that have, up to and including the moment the agreement is concluded, exclusively communicated by one or more means of distance-communication, such as is the case with consumer purchases through eBay or another online sales platform. An agreement is therefore not a distance contract if in the conclusion thereof Iuppiter did not or did not exclusively use an organized distance sales system, such as for example would be the case if the consumer provides the contact particulars to Iuppiter via the internet or after consulting the directory of a telephone book, calls or places an order by e-mail.
6. **Products:** all goods to be delivered under the agreement by or on behalf of Iuppiter to the buyer, such as server processors, servers and/or server parts like memory boards and video cards.
7. **Written:** both traditional written communication as well as communication by e-mail.

## ARTICLE 2. | GENERAL PROVISIONS

1. These terms of delivery apply to every offer made by Iuppiter and to any concluded distance contract.
2. These terms of delivery are also applicable to agreements for the execution of which third parties are engaged.
3. The applicability of any purchase conditions or other terms and conditions of the buyer is explicitly excluded.
4. The provisions of these terms of delivery may only be waived in writing. If and to the extent that what has been explicitly agreed to in writing, deviates from the provisions of these terms of delivery, what the parties have explicitly agreed in writing prevails.
5. Nullity or invalidity of one or more provisions of these terms of delivery does not affect the validity of the remaining clauses. In case of such an occurrence, the parties are required to consult each other in order to make an alternative arrangement in respect of the affected clause. To that effect, the purpose and intent of the original provision will be adhered to as much as possible.

## ARTICLE 3. | OFFER AND CONCLUSION OF THE AGREEMENT

1. Any offer made by Iuppiter is optional. Iuppiter is never obligated to accept an order from the buyer.
2. The buyer cannot derive any rights from an offer made by Iuppiter which contains a manifest error or mistake. The buyer may also not derive rights from an offer made by Iuppiter based on inaccurate or incomplete information provided by the buyer.
3. Any agreement is concluded through offer and acceptance. If the buyer's acceptance deviates from the offer made by Iuppiter, the agreement is not concluded in accordance with this deviating acceptance, unless Iuppiter indicates otherwise.
4. If Iuppiter provides the buyer with an order confirmation, this confirmation is considered to reflect the agreement correctly and completely, unless the buyer submits a pertaining written complaint to Iuppiter within 48 hours of receiving the confirmation.
5. If the buyer concludes the agreement on behalf of another natural or legal person, the buyer declares to be authorized to do so by entering into the agreement. In addition to this (legal) person, the buyer is jointly and severally liable for all obligations arising from this agreement.

## ARTICLE 4. | TERMS OF DELIVERY & DELIVERY OF THE PRODUCTS

1. Iuppiter strives to meet the delivery terms as agreed between the parties. However, all delivery terms set by Iuppiter are to be considered indicative, not as firm delivery dates. The default of Iuppiter shall only commence after the buyer notifies Iuppiter of the default in writing, in which notice a reasonable term is set within which Iuppiter can still fulfil the agreement as yet and fulfilment of the agreement is still not forthcoming after expiry of the aforementioned term.
2. Delivery terms only begin after Iuppiter has received all necessary information for the delivery from the buyer.
3. Delivery of the products takes place by delivery thereof to the delivery address specified by the buyer. In the absence of a delivery address, the billing address is deemed to be the delivery address.

4. Iuppiter reserves the right to deliver orders in parts. In that case the consumer's cooling-off period in connection with the right of termination only commences on the day that the last partial delivery of the order is received by or on behalf of the consumer.
5. Unless arises otherwise from the nature or scope of any explicitly agreed delivery condition, the risk of loss and damage to the goods passes to the buyer when the goods are received by or on behalf of the buyer. In the case of a consumer purchase, the risk of loss and damage to the products always pass to the consumer at the moment the products are received by or on behalf of the consumer.
6. Upon exceeding the agreed delivery term, the buyer shall never be entitled to refuse to accept delivery of the products and/or refuse to pay what is contractually owed to Iuppiter.
7. If the products could not be delivered due to a circumstance that is attributable to the buyer, Iuppiter will store the products at the expense and risk of the buyer, without prejudice to the obligation of the buyer to pay the sums owed to Iuppiter under the agreement.
8. In the event that the buyer refuses to take delivery of the products ordered or otherwise fails to take delivery of the products, at first request by Iuppiter the buyer will indicate within which period delivery of the products will be taken as yet. This period shall never exceed one month after the date of the request referred to in the previous sentence. Iuppiter is entitled to terminate the agreement if the buyer, after the expiry of the term listed in the previous sentence, still fails to take delivery of the products, notwithstanding the obligation of the buyer to pay the amounts due to Iuppiter under the agreement.
9. If Iuppiter has had to make reasonable costs in connection with paragraphs 6, 7 or 8 of this article which would not exist if the buyer had properly fulfilled its obligations referred to herein, these additional costs are to be borne by the buyer.

#### **ARTICLE 5. | INSPECTION, COMPLAINTS AND WARRANTY**

1. At the time of delivery of the products the buyer shall directly examine whether the nature and the amount thereof comply with the agreement, including – in so far as it is agreed that the transport is not for the risk of the buyer - examining whether the products are free of transport damage. If at the discretion of the buyer the nature and/or quantity of products do not comply with the agreement, the buyer must immediately inform Iuppiter thereof.
2. If a delivered product lacks a quality that it should avail of according to Iuppiter, or if the deviation relates to facts that Iuppiter knew or should have known but has failed to disclose, then within seven days after the detection of the deviation, or at least when it should reasonably have been detected, the buyer shall give notice in writing to Iuppiter. In the case of a consumer purchase, the notice must be given within a reasonable period after the detection, in which case a notification within a period of two months after the detection is considered timely.
3. Warranty on the products is limited to any guarantee explicitly agreed between the parties and/or any factory warranty on the products delivered to Iuppiter by suppliers, on the condition that a guarantee provided by Iuppiter, manufacturer or importer in no way affects the overriding rights that consumers can invoke against Iuppiter. Applicable warranty periods shall commence on the invoice date of the invoice issued by Iuppiter.
4. Without prejudice to any explicitly stipulated warranty, any applicable warranty is void if a defect of the product is due to an external cause or otherwise is not attributable to Iuppiter or in case of a factory warranty, to the manufacturer or importer. This includes but is not limited to defects due to damage, incorrect or improper use or incorrect or improper installation, use contrary to the instructions given by or on behalf of Iuppiter and repairs that have been carried out without the prior written consent of Iuppiter, or in case of factory warranty, of the manufacturer or importer.
5. If the buyer fails to lodge a timely complaint, Iuppiter has no obligations arising from such complaint by the buyer.
6. Even if the buyer lodges a complaint in time, the buyer's obligation for a timely payment of the amounts owed under the agreement remains.

#### **ARTICLE 6. | RIGHT OF TERMINATION FOR CONSUMERS BASED ON DISTANCE CONTRACT**

1. With the exception of what is provided in the remainder of this article and the following article, the consumer can wholly or partially terminate a distance contract within 14 days after receipt of the products, without giving reasons.
2. The consumer who invokes the right to terminate the agreement may terminate the distance contract by submitting a request to Iuppiter by e-mail or by using the standard form for withdrawal provided by Iuppiter. As soon as possible after Iuppiter has been informed of the intention of the consumer to cancel the distance contract and the conditions of this article have been met, Iuppiter will confirm termination of the distance contract by e-mail.
3. During the period referred to in paragraph 1, the consumer must carefully handle the products and the packaging. The consumer may only unpack the product and use it to the extent necessary to assess the nature and characteristics of the products. The principle here is that the consumer should only handle and inspect the products as it would have done in a physical store.
4. If the consumer exercises the right to terminate, he/she will return the products to Iuppiter in the state in which they were delivered including all accessories and in its original condition and packaging.
5. The consumer is liable for diminished value of the products if the products are handled in such manner that goes beyond what is permitted under paragraph 3. Iuppiter is entitled to charge the depreciation to the consumer and settle this amount with payments received from the consumer.

6. Return of the product must take place within fourteen days after the consumer has terminated the distance contract.
7. If the consumer exercises its right of termination, the costs for returning the products will be for the account of the consumer.
8. Iuppiter will refund payments received from the consumer, deducting any impairment, as soon as possible but no later than within fourteen days after termination of the distance contract to the consumer, provided that the products are recovered by Iuppiter or the consumer can demonstrate that the products have actually been sent back.
9. If the right of termination is only applicable to a portion of the order, then any shipping costs paid in first instance by the consumer, are not eligible for a refund.

#### **ARTICLE 7. | EXCLUSION OF THE RIGHT OF TERMINATION**

The consumer may not invoke the right of termination in case of a purchase pertaining to the delivery of products:

- which after delivery are inseparably mixed with other matters;
- which pertain to audio or video recordings or computer software of which the seal has been broken after delivery;
- in respect of which the right of termination is otherwise excluded under Section 6.5.2B of the Dutch Civil Code.

#### **ARTICLE 8. | FORCE MAJEURE**

1. Iuppiter is not obligated to fulfil any obligation under the agreement if and as long as it is being hampered by a circumstance that cannot be attributed to it under the law, a legal act or generally accepted standards in society.
2. If the force majeure situation makes it permanently impossible to fulfil the agreement, the parties are entitled to terminate the agreement with immediate effect.
3. If at the commencement of the force majeure Iuppiter has already partially fulfilled its obligations, or can only partially fulfil its obligations, it is entitled to separately invoice the already performed, respectively executable portion of the agreement, as if it were an independent agreement.
4. Damage due to force majeure, without prejudice to the application of the preceding paragraph, is never recoverable.

#### **ARTICLE 9. | SUSPENSION AND TERMINATION**

1. If warranted by the circumstances, Iuppiter is authorized to suspend or cancel the agreement with immediate effect in whole or in part, if and insofar as the buyer does not, not timely or completely comply with its obligations under the agreement, or if after the conclusion of the agreement, Iuppiter learns of circumstances providing valid grounds to fear that the buyer will not meet its obligations.
2. If the buyer is in a state of bankruptcy, has requested a (temporary) suspension of payment, a Debt Restructuring for Natural Persons is applicable, any attachment is levied on its property or the buyer cannot otherwise freely dispose of its assets, Iuppiter is entitled to terminate the agreement with immediate effect unless the buyer can put up adequate security for payment of the amount due to Iuppiter under the agreement.
3. Furthermore, Iuppiter is entitled to terminate the agreement if and when circumstances arise of such a nature that fulfilment of the agreement is impossible or unaltered maintenance thereof cannot be reasonably demanded from Iuppiter.
4. The buyer will never claim any form of compensation in connection with Iuppiter's exertion of its right to suspend or terminate on the basis of this article.
5. To the extent that this can be attributed to the buyer, the buyer is obligated to reimburse Iuppiter for the damage suffered as a result of the suspension or termination of the agreement.
6. If Iuppiter terminates the agreement pursuant to this article, all claims against the buyer become immediately due and payable.

#### **ARTICLE 10. | PRICES AND PAYMENTS**

1. Unless explicitly agreed otherwise, the prices quoted by Iuppiter are exclusive of VAT and any other government levies and the shipping costs of the products are for the account of the buyer. An offer made by Iuppiter to a consumer lists prices (also) including VAT.
2. Payments must be made in the manner specified by Iuppiter and within the time limit set by Iuppiter.
3. If pre-payment is agreed, Iuppiter is not obligated to execute the agreement until the payment is received in full by Iuppiter.
4. Insofar as the law does not mandatorily preclude this, payment must be made without invoking settlement or suspension.
5. Iuppiter is entitled to make invoices issued to the buyer available to the buyer only by e-mail.
6. In the event of liquidation, bankruptcy, applicability of the Debt Restructuring for Natural Persons or (temporary) suspension of payment of the buyer, the claims against the buyer shall become immediately due and payable.
7. If timely payment is not made, default of the buyer is legally established. From the day the failure occurs by the buyer, the buyer owes an interest of 1% per month over the outstanding amount, whereby part of a month is considered a full month. In deviation of the preceding sentence, if the buyer acts as a consumer then statutory interest is due instead of contractual interest.
8. All reasonable expenses, such as judicial and extra-judicial costs and the cost of enforcement incurred to obtain payment from the buyer, shall be borne by the buyer.

## **ARTICLE 11. | LIABILITY AND INDEMNITY**

1. The use of the products is at the own risk of the buyer or end user. Products sold by Iuppiter are intended for use in accordance with the purpose of the products. Iuppiter is, except for intent and deliberate recklessness on its part, never liable for damages resulting from the use of the products it sells.
2. The buyer shall bear the damage caused by errors or omissions in the information it has provided, a failure in the performance of the buyer's obligations pursuant to the law or the agreement and any other circumstance that cannot be attributed to Iuppiter.
3. Iuppiter is never liable for consequential damages, including loss of profit and loss and damage suffered due to business interruption.
4. The liability of Iuppiter is always limited to a maximum of the invoice value of the agreement, at least to that part of the agreement to which the liability of Iuppiter relates, provided that the liability of Iuppiter will never amount to more than the sum which is actually paid out under the appropriate liability insurance of Iuppiter increased with any deductible which is applicable under that insurance.
5. Iuppiter at all times has the right to remedy the buyer's damages for which Iuppiter, notwithstanding the provisions of these terms of delivery, is liable. The buyer must accordingly grant Iuppiter the opportunity to do so, failing which any liability on the side of Iuppiter expires.
6. The limitation period for all claims and defences against Iuppiter is one year. Notwithstanding the previous sentence, claims and defences of consumers based on facts that would justify the assertion that a consumer purchase does not comply with the agreement, expire within two years.
7. The buyer indemnifies Iuppiter for any claims by third parties who suffer damage in connection with the execution of the agreement of which the cause is attributable to others than Iuppiter.
8. In the case of a consumer purchase the limits of this article do not go beyond what is permitted under Article 7:24 paragraph 2 of the Dutch Civil Code.

## **ARTICLE 12. | RETENTION**

1. All products delivered by Iuppiter remain the property of Iuppiter until the buyer has properly fulfilled all its obligations under the agreement.
2. The buyer is prohibited to sell, pledge or encumber in any other way products that are under retention of title.
3. If third parties seize the products subject to retention of title or wish to establish or exercise rights, the buyer is obligated to inform Iuppiter of this as soon as possible.
4. The buyer gives unconditional permission to Iuppiter or third parties designated by Iuppiter to enter the premises where the products under retention of title are located. Upon the buyer's default Iuppiter is entitled to recover the pertaining products. All reasonable costs related to this are to be borne by the buyer.
5. If after the products sold have been delivered and the buyer has complied with its obligations, the retention of title is revived in respect of those products if the buyer fails to fulfil its obligations under a later agreement.

## **ARTICLE 13. | GENERAL COMPLAINT POLICY**

1. Complaints relating to the execution of the agreement, without prejudice to the stipulations of the rest of the conditions of these terms for delivery, should be submitted to Iuppiter in writing providing a clear and complete description within a reasonable time after the buyer has detected the defects.
2. Complaints lodged with Iuppiter are answered within a period of fourteen days after receipt thereof. If a complaint requires a longer processing time, a reply is sent within the period of fourteen days confirming receipt and containing an indication of when the buyer can expect a more detailed answer.

## **ARTICLE 14. | FINAL PROVISIONS**

1. Dutch law is exclusively applicable to all agreements and pursuant legal relationships between parties.
2. Parties shall not instigate proceedings with the court before they have done their utmost to resolve the dispute by mutual agreement.
3. In so far as the law does not dictate otherwise, the court within the jurisdiction of the location of Iuppiter is exclusively designated to hear legal disputes.
4. The Dutch version of these terms of delivery shall be decisive for the interpretation of the terms contained therein.