

## GENERAL TERMS AND CONDITIONS OF SALE FORTUIN DOCKUM BV

### 1. Definitions

In these general terms and conditions ("Conditions") the following terms shall have the following meaning:

- (a) Fortuin Dockum BV: The supplier of confectionery or equivalent or related Products and/or Services, which supplier uses these Conditions or relies on them, as well as its legal successors by special or universal title;
- (b) Client: any natural or legal person on whose instructions Fortuin Dockum BV supplies Products and/or performs Services, or with whom Fortuin Dockum BV enters in to an Agreement or with whom Fortuin Dockum BV discusses or negotiates the conclusion of an Agreement;
- (c) Agreement: any agreement that is formed between Fortuin Dockum BV and the Client, any change or addition thereto, as well as any acts or legal acts in preparation and in performance of such agreement;
- (d) Products: all things, including documentation, drawings, testing equipment and all (other) results of services provided by Fortuin Dockum BV that are the subject of an agreement;
- (e) Services: all work, in whatever form and howsoever named, (provision of services, installation work, contracts for work, supplying staff, etc.) which Fortuin Dockum BV carries out for or for the benefit of the Client;
- (f) Order: any order from the Client in whatever form.
- (g) Product recall: all actions aimed at or related to removing any possible unsafe product, which are possibly unsafe, from circulation. Said actions include, but not exclusively: making inquiries about a possible unsafe product, considering appropriateness of various measures, warning of trade partners and end-users, collection, monitoring progress of various measures, etc. A Product recall can be started if:
  - 1) a product does not meet up to legal requirements, or;
  - 2) the product no longer offers safety to a level that might be expected, or;
  - 3) the presumption arises that a product no longer offers safety to a level that might be expected and Fortuin Dockum BV wishes to prevent any possible damages that might arise from such lack of safety.

### 2. Applicability and Position of Consumers

2.1 Except where, in view of the nature of the deliverables agreed or to be agreed, other general terms and conditions of Fortuin Dockum BV apply (e.g. the General Terms and Conditions of Purchase, Order and Tender), these Conditions shall form part of all Agreements and these Conditions shall apply to all (other) acts and legal acts between Fortuin Dockum BV and the Client, even if such (legal) acts do not lead to or are not connected to an Agreement.

2.2 Fortuin Dockum BV explicitly rejects the applicability of any general terms or conditions of the Client.

2.3 All (legal) acts of Fortuin Dockum BV and its (potential) other parties in relation to any Agreements or negotiations thereon, in which Fortuin Dockum BV will act (fully or partially) as a seller of goods, a client (for example relating to the provision of services) and/or a contracting authority of work, shall be subject (also) to the General Terms and Conditions of Purchase. These General Terms and Conditions of Purchase shall be sent to the Client free of charge at the Client's first request.

2.4 Consumers who are a Client shall have rights under mandatory law vis-à-vis Fortuin Dockum BV, which Fortuin Dockum BV does not wish to impair in any way. With regard to these consumers, any provision in these Conditions that may be

contrary to the aforesaid rights shall not apply to them, and shall not be invoked by Fortuin Dockum BV.

### 3. Offers, Formation of Agreements and Quotes and Designations of Products and Services

3.1 An offer (or price quote) from Fortuin Dockum BV shall not bind Fortuin Dockum BV and shall only be an invitation to the Client to place an Order.

3.2 An Agreement shall only be formed if and to the extent that Fortuin Dockum BV accepts an Order of the Client in writing, or executes an Order, unless the Client proves by other means that Fortuin Dockum BV has accepted the Client's Order fully and unconditionally. In the event that Fortuin Dockum BV makes any performance on request before full agreement has been reached on the price and payment conditions for that performance, the Client shall pay Fortuin Dockum BV for it in accordance with the then-current rates of Fortuin Dockum BV, with due observance of the provisions of Articles 6 and 7. As far as the Client accepts a binding offer from Fortuin Dockum BV – in deviation of the provisions in the first sentence of this Article 3.2 – with deviations of minor importance, such deviations shall not form part of the Agreement, and the Agreement shall be formed in accordance with the offer from Fortuin Dockum BV.

3.3 Although all the indications given by Fortuin Dockum BV of numbers, measurements, weights and/or other designations of the Products and/or Services have been made with due care, Fortuin Dockum BV cannot guarantee that no deviations will occur therein. Any samples, models or drawings shown or provided are nothing but indications of the relevant Products and/or Services. In the event that the Client can prove that the Products and/or Services supplied or delivered deviate from the indications given by Fortuin Dockum BV or from the samples, drawings or models to such an extent that the Client can no longer reasonably be obliged to purchase them, the Client shall have the right to dissolve the Agreement, but only to the extent that dissolution is reasonably necessary.

### 4. Commercial Agency and Distribution Agreements

4.1 The Client shall not be considered to be a commercial agent or a distributor of Fortuin Dockum BV, unless he has been appointed as such explicitly under a written commercial agency and/or distribution agreement.

4.2 A commercial agency and/or distribution agreement shall be regarded as non-exclusive, except to the extent that such agreement provides explicitly that the relationship shall be regarded (partly) as exclusive.

4.3 The discount or commissions the Client receives as a distributor or agent shall always include the fee for bringing in new relations, and/or for increasing the goodwill of Fortuin Dockum BV. Fortuin Dockum BV shall not owe any compensation (for damage, goodwill or clientele) upon termination of the commercial agency agreement and/or distribution agreement, except where such compensations are prescribed by provisions of mandatory applicable law.

### 5. Changes and Additions

5.1 Any changes and additions to any provision in an Agreement and/or the Conditions may only be agreed in writing. This is an evidentiary agreement as envisaged in Section 7:900 of the Dutch Civil Code.

5.2 If any change and/or addition as described in Article 5.1 is agreed, such change and/or addition shall apply only to the relevant Agreement.

## 6. Prices

6.1 Unless indicated otherwise, all prices of Fortuin Dockum BV shall be expressed in Euros and shall be exclusive of turnover tax. Unless the brochures, price lists or other promotional materials of Fortuin Dockum BV state otherwise, or unless it has explicitly been agreed otherwise, the costs of special forms of packaging and shipment (including shipment to multiple addresses), the costs of import and export duties and excise duties, costs of travelling and accommodation in the scope of the provision of Services, as well as all (other) levies or taxes imposed or levied for any performance, shall be separately payable by the Client.

6.2 Fortuin Dockum BV shall have the right to pass on to the Client any changes of the factors influencing the price and the additional costs of Fortuin Dockum BV mentioned in paragraph 6.1 - including purchase prices, exchange rates, import and export duties and any other levies, insurance fees, freight prices and other levies or taxes payable in the event of import and export. The Client shall only have the power to dissolve the Agreement in the event that this is done within three months after acceptance of the Order by Fortuin Dockum BV, and on condition that the Client is entitled to a reliance on the grounds for nullification as envisaged in Section 6:235 of the Dutch Civil Code.

6.3 The Client shall indemnify Fortuin Dockum BV against all costs and damages that may arise for Fortuin Dockum BV from the fact that: (a) the Client is not properly registered for turnover tax or any similar tax in a relevant EU Member State; and/or (b) the Client provides incorrect or ill-timed information to Fortuin Dockum BV and/or the authorities responsible for turnover tax or a similar tax in a relevant EU Member State.

## 7. Payment

7.1 Unless agreed otherwise in writing, in the case of the delivery of Products the Client shall pay all amounts charged to him effectively in the currency stated on the invoice at the time of delivery of said Products to Fortuin Dockum BV. In the case of the provision of Services, the Client shall pay all amounts charged to him effectively in the currency stated on the invoice to Fortuin Dockum BV within 30 days of the invoice date. At the discretion of Fortuin Dockum BV, all payments shall be made into a giro or bank account to be designated by it, unless agreed otherwise.

7.2 Any objections to invoices, specifications, descriptions and prices shall be notified to Fortuin Dockum BV in writing within 10 days. Where this is not possible on account of any cause that cannot be attributed to the Client, the Client shall in any case communicate his objections in writing to Fortuin Dockum BV within 10 days after such cause has been removed.

7.3 All amounts charged to the Client shall be paid without any discounts or deductions.

7.4 The Client shall not have the right to set off any claim on his part against a claim of Fortuin Dockum BV, unless he is permitted to do so on the basis of a judicial or arbitration decision that has become final.

7.5 The Client shall not have the right to suspend his obligations, unless the Client submits the dispute to the competent Court according to Article 21.4 within 30 days from the moment when the relevant obligations fell due.

7.6 In the event that Fortuin Dockum BV has and can have serious doubts at any time about the creditworthiness of the Client, and/or in the event that the Client repeatedly fails to pay

correctly or timely and has been demanded to do so by Fortuin Dockum BV at least once, Fortuin Dockum BV shall have the right, before making any (further) performances, to claim advance payment from the Client of the purchase price of the Products and/or the fees for the Services also with regard to Agreements, or to claim that the Client provide a sound security in the amount claimable by Fortuin Dockum BV from the Client under the Agreement, and including the cash against delivery conditions and documentary credit conditions that are standard business practice, such as irrevocable – and in this case also confirmed by a first class bank – letters of credit, cash against documents or cash against delivery.

7.7 In the event that it is agreed that payment will be made and/or security will be provided through documentary credit and/or bank guarantees, the Client shall guarantee that these shall always be performed by a bank with a good reputation.

7.8 Without further notice of default, the Client shall owe interest on all amounts that have not been paid ultimately on the last day of the term of payment, which interest shall be equal to the then-current statutory interest in the Netherlands as referred to in Section 6:119a of the Dutch Civil Code. Upon each expiry of one month, the amount on which the interest is calculated shall be increased by the interest due for that month.

7.9 In the event that the Client has not paid the amount and the interest due after the expiry of a term of payment set by registered mail, the Client shall be obliged to compensate Fortuin Dockum BV for all extrajudicial and judicial costs, including the reasonable costs of legal assistance in or outside legal proceedings.

7.10 In the event that Fortuin Dockum BV grants the Client a postponement for any performance, either out of leniency or any other considerations, the new term granted shall always be a strict deadline.

## 8. Term of Delivery

8.1 The term of delivery of Products and/or the term for the provision of Services given by Fortuin Dockum BV shall be based on the circumstances applicable to Fortuin Dockum BV at the time of conclusion of the Agreement and, as far as dependent on the performance of third parties, shall be based on the information provided by such third parties to Fortuin Dockum BV. The term of delivery and/or term of performance shall be observed by Fortuin Dockum BV as much as possible. For this purpose Fortuin Dockum BV shall be subject to an obligation to perform to the best of its ability.

8.2 The above-mentioned terms shall commence on the date of the written order confirmation by Fortuin Dockum BV. In the event that Fortuin Dockum BV requires any information or resources for the performance of the Agreement that the Client must provide, the terms shall commence on the day on which all necessary information or resources are in the possession of Fortuin Dockum BV, but no sooner than on the day of the written order confirmation.

8.3 In the event that any term is exceeded, the Client shall not be entitled to any compensation (of damage) in that respect. In such case the Client shall also not have the right to dissolve or terminate the Agreement, unless the excess of the term is such that the Client cannot reasonably be expected to maintain the Agreement (or the relevant part thereof). In that case the Client shall have the right, after having given notice of default containing a reasonable period for performance, to dissolve or terminate the Agreement by registered mail, however, only to the extent that this is strictly necessary.

8.4 Fortuin Dockum BV shall always have the right to deliver the Products in parts.

## 9. Delivery and Risk

9.1 The delivery of the Products, including the costs of delivery and the passing of the risk shall take place – on condition that this has been clearly stated in the offer or the order confirmation – according to the conditions that are standard business practice, such as delivery duty paid, FOB, CIF and CF and the Incoterms of the International Chamber of Commerce (ICC) in Paris as will apply to delivery in all such cases from time to time.

9.2 In the event that the conditions referred to in the previous paragraph have not been agreed, the delivery and the passing of the risk of the Products and their packaging shall always take place at the place and time when and where the Products are ready for shipment to the Client. Fortuin Dockum BV shall notify the Client as soon as possible of said time and place, and the Client shall purchase the Products as soon as possible, but no later than 30 days after such notice.

9.3 The Client shall ensure that there will be no hindrances on his part to meet specific terms agreed, including terms of delivery, purchase and installation.

9.4 Should the Client fail to purchase the Products or to purchase them on time for a ground without legal validity, the Client shall be in default without notice of default being required. In that event Fortuin Dockum BV shall have the right either to store the Products for the account and risk of the Client or to sell them to a third party. The Client shall remain obliged to pay the purchase price, plus interest and costs by way of compensation, however, where appropriate, less the net proceeds of the sale to such third party.

## 10. Force Majeure

10.1 In the event that Fortuin Dockum BV is unable to fulfil its obligations towards the Client due to a non-imputable failure (“force majeure”), the obligations shall be suspended for as long as the situation of force majeure continues.

10.2 In the event that the situation of force majeure has continued for three months, both parties shall have the right to dissolve the Agreement in writing in whole or in part.

10.3 Force majeure of Fortuin Dockum BV shall mean any circumstance independent of the will of Fortuin Dockum BV, as a result of which the performance of its obligations (or the relevant part thereof) towards the Client is prevented, delayed or made uneconomic, or as a result of which the performance of these obligations cannot reasonably be required of Fortuin Dockum BV.

10.4 The parties shall notify each other as soon as possible of any (potential) situation of force majeure.

## 11. Retention of Title

11.1 Notwithstanding the actual delivery, the ownership of the Products shall only pass to the Client after the Client has fully paid everything he is or will be due to Fortuin Dockum BV for Products delivered or to be delivered under an agreement, including the purchase price, any supplements, interest, taxes and costs due pursuant to these Conditions or the Agreement, and any work performed or to be performed under such an agreement.

11.2 Any amount received from the Client shall first serve to settle any claims Fortuin Dockum BV may have against the Client, regarding which Fortuin Dockum BV has not made a retention of title in Article 11.1. After that, any amount received from the

Client shall first serve to settle any interest or costs due as referred to in Article 7.8 & 7.9.

11.3 Before the ownership of the Products has passed to the Client, the Client shall not have the right to lease the Products, to allow the use of or to pledge the Products to third parties, or to encumber them for the benefit of third parties in any other way. The Client shall only have the right to sell or deliver the Products, of which Fortuin Dockum BV is the owner, to third parties as far as this is necessary in the ordinary course of the Client's business.

11.4 The Client is obliged to treat the items delivered under retention of title carefully and as recognizable property of Fortuin Dockum BV, and to ensure them against risks such as fire, explosion, damage and theft. The Client shall assign all rights to the relevant insurers in this connection to Fortuin Dockum BV at Fortuin Dockum BV's first request.

11.5 If and for as long as Fortuin Dockum BV is the owner of the Products, the Client shall notify Fortuin Dockum BV in writing immediately if any part of the Products is lost or damaged, or if the Products are seized and/or the Products (or any part thereof) are claimed in any other way. Furthermore, the Client shall inform Fortuin Dockum BV at Fortuin Dockum BV's first request of where the Products are of which Fortuin Dockum BV is the owner.

11.6 In the event of seizure, (preliminary) suspension of payments or bankruptcy, the Client shall inform the bailiff, the administrator or the receiver levying the seizure of the (proprietary) rights of Fortuin Dockum BV.

## 12. Intellectual Property

12.1 Fortuin Dockum BV declares that, as far as it is aware, the Products are not infringing any rights of intellectual property of third parties applicable in the Netherlands. However, Fortuin Dockum BV cannot indemnify the Client against or be liable for any infringements of the intellectual property rights of third parties.

12.2 In the event that Fortuin Dockum BV produces Products or has them produced on the specific instruction of the Client, on the basis of a design that does not originate from Fortuin Dockum BV, the Client indemnifies Fortuin Dockum BV with regard to all infringements of the intellectual property rights of third parties which concern the Products (or their production and use).

12.3 The Client guarantees not to infringe, nor to allow or facilitate third parties to do so, the intellectual property rights of Fortuin Dockum BV or its suppliers with regard to the Products, for example by copying, processing or imitating the Products.

## 13. Inspection and Complaints

13.1 The Client is obliged to inspect the Products or to have them inspected carefully and immediately either upon their arrival at the place of destination or upon receipt by himself or by a third party acting on his instructions, whichever is sooner. Any complaints about defects to the Products attributable to material or manufacturing defects, as well as variations in quantity, weight, composition or quality between the Products delivered and the description given thereof on the order confirmation and/or invoice, shall be notified in writing to Fortuin Dockum BV with 10 days from the arrival of the Products. Defects that could not reasonably have been discovered with the term set above shall be notified in writing to Fortuin Dockum BV immediately upon discovery, and no later than within 30 days from the arrival of the Products.

13.2 After the discovery of any defect, the Client shall be obliged to cease the use, processing or installation of the relevant Products without delay.

13.3 The Client shall lend Fortuin Dockum BV all assistance desired by it for the investigation of the complaint, including by giving Fortuin Dockum BV the opportunity to start or to order an investigation on site into the circumstances of processing, treatment, installation and/or use.

13.4 The Client shall have no right to complain with regard to Products concerning which Fortuin Dockum BV is not able to control complaints.

13.5 The Client shall not be free to return the Products before Fortuin Dockum BV has approved this in writing. Any costs of return shall be payable by the Client and the Products shall remain at his risk.

13.6 Any defects regarding a separate lot of Products, which is part of a delivery consisting of several lots, shall only give the Client the right to dissolve the full Agreement if it cannot reasonably be required of the Client to maintain the remaining part of the Agreement.

13.7 The Client cannot institute any claims with regard to complaints about defects in the Products against Fortuin Dockum BV as long as the Client has not performed any obligation in direct consideration thereof towards Fortuin Dockum BV.

13.8 In the event that the Client submits a complaint concerning defects in a Product timely, correctly and rightly, the liability arising therefrom for Fortuin Dockum BV shall be limited to the obligations described in Article 14.1, depending on the nature of the complaint and with due observance of the other provisions of Article 14.

#### **14. Warranty**

14.1 In the event that a complaint was submitted timely, correctly and in accordance with the provisions of Article 13, and it has been proven sufficiently according to the reasonable judgment of Fortuin Dockum BV that the Products are not functioning properly, Fortuin Dockum BV will have the choice either to provide new Products free of charge against the return of the Products found to be defective, or to grant the Client a discount to the purchase price to be determined in mutual consultation. By fulfilling either of the performances stated above, Fortuin Dockum BV shall be fully discharged of its warranty obligations and Fortuin Dockum BV shall not be liable for any further compensation (for damage).

14.2 In the event that Fortuin Dockum BV delivers Products to the Client which Fortuin Dockum BV has acquired from its suppliers, Fortuin Dockum BV shall never be bound by a more extensive warranty or liability vis-à-vis the Client than that which Fortuin Dockum BV can lay claim to vis-à-vis its supplier.

14.3 Fortuin Dockum BV explicitly makes no warranties for any recommendations or advices regarding the installation or the use of the Products, nor for any such advices or instructions from the Client to his customers.

14.4 The Products shall remain at the sole risk of the Client in the event that Fortuin Dockum BV does any repair work to the Products, unless the repair is the result of defective performance by Fortuin Dockum BV and the Client cannot reasonably be expected to insure the Products against the above-mentioned risk.

#### **15. Product Recall**

15.1 Client has the obligation to collect and store all information needed for tracing the Product. By means of such a tracibility-system the Client has to be able to promptly inform Fortuin Dockum BV (if applicable):

1) which Products specifically were delivered by Fortuin Dockum BV;

2) which customers the by Fortuin Dockum BV delivered Products were resold to.

15.2 When a Client becomes aware of a failure, or a presumption of such failure and/or defect, Client immediately shall inform Fortuin Dockum BV at its own initiative. When doing so Client will at least state the following:

- 1) the nature of the failure;
- 2) tracability data (i.e. Lot- and/or batchcodes) of possibly unsafe Products delivered by Fortuin Dockum BV;
- 3) names of the customers who Client has resold the possibly unsafe Products;
- 4) all other information that might be relevant.

15.3 If by judgement of Fortuin Dockum BV more information is needed in order to complete further investigation into a possible unsafe Product and/or to take correct measures, Client will at first request share all relevant information which can reasonably be assumed to be in her possession.

15.4 Fortuin Dockum BV and Client will then in mutual agreement decide if, and if so what, measures shall be taken in order to mitigate the risk caused by a possible flaw of the by Fortuin Dockum BV supplied Product. Such measures can include a Product Recall.

15.5 Fortuin Dockum BV can compel Client to undertake a Product Recall. All related costs to such a Recall are on account of article 16.1 of this Agreement borne by the Client, unless the root cause of the Product Recall is due to wilful intent or deliberate recklessness by Fortuin Dockum BV or its executive staff, or if liability arises from provisions of mandatory applicable product liability law, as referred to in article 16.3 of this Agreement.

#### **16. Liability and Indemnity**

16.1 Fortuin Dockum BV shall never be liable for any indirect damage of the Client or third parties, including consequential damage (such as the inability to cultivate the soil (on time), structural decay of the soil, damage to plants, etc.), intangible damage, trading loss or environmental damage.

16.2 The liability of Fortuin Dockum BV towards the Client for whatever cause shall be limited per occurrence (on the understanding that connected occurrences shall count as one occurrence) to the relevant contract sum (exclusive of VAT). In the event that no contract sum can be designated, the liability of Fortuin Dockum BV shall be limited to the amount it will receive from its corporate liability insurer for the relevant incident.

16.3 The limitations of liability in Articles 16.1 and 16.2 shall not apply to the extent that the relevant damage was caused by the wilful intent or deliberate recklessness by Fortuin Dockum BV or its executive staff, or to the extent that the liability of Fortuin Dockum BV arises from provisions of mandatory applicable product liability law.

16.4 Save in the event of intent or gross negligence on the part of Fortuin Dockum BV or its executive staff, the Client shall indemnify Fortuin Dockum BV against all claims of third parties based on whatever ground, with regard to the compensation of damage, costs or interests in connection with the Products, and/or arising from the use of the Products, unless the Client cannot reasonably be blamed in any way with regard to the damage.

16.5 The Client shall indemnify Fortuin Dockum BV against all claims of third parties and all costs and damage that could arise for Fortuin Dockum BV or could be connected with any public procurement procedure that was not carried out while it should have been, or with any other violation of procurement law or competition law.

#### **17. Other Obligations and Responsibilities of the Client**



17.1 The Client shall always provide Fortuin Dockum BV in good time with all information necessary for the performance of the work of Fortuin Dockum BV, and guarantees that such information will be correct and complete.

17.2 The Client shall not remove or make invisible the trademark and/or recognition notices on the Products or their packaging in whole or in part.

## 18. Dissolution

18.1 In the event of a (preliminary) suspension of payments, bankruptcy, halting or liquidation of the Client's business, all Agreements with the Client shall be dissolved by operation of law, unless Fortuin Dockum BV notifies the Client within a reasonable time (where appropriate at the request of the administrator or receiver) that it requires performance of the relevant Agreement(s) (or any part thereof), in which case Fortuin Dockum BV shall have the right, without giving notice of default: (a) to suspend performance of the relevant Agreement(s) until sufficient security for payment has been provided; and/or (b) to suspend any and all of its obligations towards the Client; all without prejudice to the other rights of Fortuin Dockum BV under whatever Agreement with the Client, and without Fortuin Dockum BV being liable for any compensation.

18.2 In the event that the Client fails to fulfil any obligation arising for him from any Agreement properly, within a set term or otherwise, the Client shall be in default and Fortuin Dockum BV shall have the right, without notice of default or judicial intervention: (a) to suspend performance of that Agreement and any directly related Agreements until sufficient security for payment has been provided; and/or (b) to dissolve that Agreement and any directly related Agreements in whole or in part; all without prejudice to the other rights of Fortuin Dockum BV under whatever Agreement with the Client, and without Fortuin Dockum BV being liable to pay any compensation.

18.3 In the event that an incident occurs as described in Article 18.1 or 18.2, all claims of Fortuin Dockum BV against the Client and the claims described therein arising from the relevant Agreement(s), respectively, shall be claimable immediately and fully, and Fortuin Dockum BV shall have the right to take back the relevant Products. In that event, Fortuin Dockum BV and its authorized representative(s) shall have the right to enter the sites and buildings of the Client in order to take possession of the Products. The Client shall be obliged to take the necessary measures in order to give Fortuin Dockum BV the opportunity to implement its rights.

18.4 Save in the event of a consumer purchase, the applicability of Section 6:278 of the Dutch Civil Code is explicitly excluded in the event that Fortuin Dockum BV dissolves any Agreement with the Client, or initiates the reversal in any other way as envisaged in Section 6:278(2) of the Dutch Civil Code.

## 19. Assignment of Rights and Obligations

19.1 Fortuin Dockum BV shall be allowed to assign the rights and obligations described in any Agreement with the Client to third parties. In the event that obligations of Fortuin Dockum BV are assigned to third parties, Fortuin Dockum BV shall notify the Client thereof in advance, and the Client shall have the right to dissolve the Agreement. Fortuin Dockum BV shall not be liable to pay any compensation in this respect.

19.2 The Client shall not have the right to assign his rights and/or obligations under an Agreement to any third party without the prior written permission of Fortuin Dockum BV.

## 20. Enforcement of Right to Suspend Performance, Right to Dissolution and Right to Nullification by Fortuin Dockum BV

20.1 In the event that Fortuin Dockum BV, on the basis of circumstances it is and should have been aware of at that time, reasonably deems to have the right to enforce a right to suspend performance, to dissolution or to nullification, Fortuin Dockum BV shall not be obliged to pay the statutory interest in the event that it will be established later that it has not lawfully enforced the aforesaid right(s).

## 21. Services and Contracts for Work

21.1 This Article contains specific provisions with regard to the Services to be performed by Fortuin Dockum BV for the Client. As far as they are contrary to the other provisions in these Conditions, the provisions in this Article shall have precedence.

21.2 Fortuin Dockum BV warrants that: (a) The Services to be rendered by it or on its behalf shall be performed in a professional manner; (b) For the duration of the Agreement, any persons to be engaged by Fortuin Dockum BV for the performance of the Agreement shall meet and continue to meet any qualities further agreed with regard to education, expertise and experience.

21.3 Whenever the provision of services agreed so requires, the Client shall timely grant Fortuin Dockum BV access to and disposal free of charge of all resources and facilities Fortuin Dockum BV needs.

21.4 Should it appear that the Services cannot (or partly not) be provided as a result of the Client's failure to fulfil any obligation vis-à-vis Fortuin Dockum BV, or of any circumstances otherwise attributable to the Client, the Client shall compensate the costs – calculated on the basis of the then-current general rates of Fortuin Dockum BV – which Fortuin Dockum BV has incurred in this respect.

21.5 In the event that the price is determined on the basis of the actual costs, all hours worked by Fortuin Dockum BV in the performance of the Services, including travel hours, may be charged, adding the costs of materials and any other costs reasonably incurred by Fortuin Dockum BV for purposes of the performance of the Services. In the event of subsequent calculation, Fortuin Dockum BV shall specify the hours and costs in the relevant invoice.

21.6 Unless otherwise agreed, the contract sum in the case of contract works shall be invoiced as follows: (a) 30% upon the conclusion of the Agreement; (b) 50% upon the commencement of the contract works; (c) 20% upon (first) delivery of the results of the contract works or their putting into use, whichever is sooner.

21.7 In the event that the Client wishes to make any additions or changes to the contract works agreed that Fortuin Dockum BV must perform under the Agreement, and Fortuin Dockum BV is of the view that these deliverables are increased or extended as a result thereof, this shall constitute an upward contract variation, which can be charged separately to the Client – with due observance of the previous paragraph –, also if the parties had agreed on a fixed price earlier.

21.8 In the event that Fortuin Dockum BV is of the view that there is an upward contract variation, it shall notify the Client thereof as soon as possible and shall inform the Client of the consequences thereof for the price and for the term within which Fortuin Dockum BV will be able to perform all its other deliverables under the Agreement. The Client shall be deemed to have approved the execution of the upward contract variation and the costs and consequences connected therewith, unless he lodges a written objection thereto within eight days from the

above-mentioned notification by Fortuin Dockum BV. Fortuin Dockum BV may wait with the execution of an upward contract variation until the Client has given Fortuin Dockum BV a written instruction to that effect.

21.9 Whenever the work agreed so requires, the Client shall timely grant Fortuin Dockum BV access to and disposal free of charge of all resources and facilities Fortuin Dockum BV needs.

## **22. Governing Law, Duty to Provide Information and Competent Court**

22.1 These Conditions as well as all Agreements shall be governed by the laws of the Netherlands. However, with regard to Agreements as envisaged in Section 6:247(2) of the Dutch Civil Code, it is provided explicitly that Chapter 3, Title 5 of Book 6 of the Dutch Civil Code shall not apply.

22.2 Third parties shall not enter into any Agreement between Fortuin Dockum BV and the Client pursuant to a third-party clause in these Conditions or the Agreement. Therefore Section 6:254(1) of the Dutch Civil Code shall not apply.

22.3 If these Conditions apply in an international relationship with the Client, the Client shall always inform Fortuin Dockum BV promptly of any provisions in these Conditions that are not enforceable in the country of the Client. Provided that Fortuin Dockum BV has given its approval in advance, Fortuin Dockum BV shall then bear the reasonable costs of any examination necessary for this purpose. As far as the Client fails to comply with the stipulation in the first sentence of this Article 21.3, the Client shall not rely in or out of court on the possible unenforceability of such provisions, and shall indemnify Fortuin Dockum BV against any damage that may arise, unless Fortuin Dockum BV has refused to pay the reasonable costs referred to above.

22.4 Except where any applicable national or international mandatory rules of law prescribe otherwise, any disputes between the parties shall be submitted, at the discretion of the party bringing a summons or petition, either to the competent court in The Hague or to a court that is otherwise competent pursuant to national or international rules of law.

22.5 The applicability of the United Nations Convention on Contracts for the International Sale of Goods 1980 (CISG) is explicitly not excluded.

22.6 In case of deviations between this translation and the original, the 'Algemene Verkoopvoorwaarden Fortuin Dockum BV' shall prevail over these 'General Terms and Conditions of Sale Fortuin Dockum BV'.