

Definitions

1. NemaSync: a sole proprietorship established in Geffen, Chamber of Commerce no. 73818658.
2. Customer: the person/company with whom NemaSync has entered into an agreement.
3. Parties: NemaSync and customer together.

Applicability

1. These terms and conditions will apply to all quotations, offers, activities, orders, agreements and deliveries of services or products by or on behalf of NemaSync.
2. Parties can only deviate from these conditions if they have explicitly agreed upon in writing.
3. The parties expressly exclude the applicability of supplementary and/or deviating general terms and conditions of the customer or of third parties.

Offers and quotations

1. Offers and quotations from NemaSync are without engagement, unless expressly stated otherwise.
2. An offer or quotation is valid for a maximum period of thirty (30) days from its date, unless another acceptance period is stated in the offer or quotation.
3. If the customer does not accept an offer or quotation within the applicable time frame, the offer or quotation will lapse.
4. Offers and quotations do not apply to repeated orders, unless the parties have agreed upon this explicitly and in writing.

Acceptance

1. Upon acceptance of a quotation or offer without engagement, NemaSync reserves the right to withdraw the quotation or offer within 3 days after receipt of the acceptance, without any obligations towards the customer.
2. NemaSync can end ongoing negotiations with the customer at any time, without being liable for any damages.
3. Verbal acceptance of the customer only commits NemaSync after the customer has confirmed this in writing (or electronically).

Prices

1. All prices used by NemaSync are in euros, are exclusive of VAT and exclusive of any other costs such as administration costs, levies and travel-, shipping- or transport expenses, unless expressly stated otherwise or agreed otherwise.
2. VAT is charged separately and will be itemized on the invoice. EU business owners that are not based in the Netherlands, may provide their company registered VAT number in order to be exempted from VAT. Shipping/orders outside the EU will be exempted from VAT.
3. NemaSync is entitled to adjust all prices for its products or services, shown in its shop, on its website or otherwise, at any time.
4. Increases in the cost prices of products or parts thereof, which NemaSync could not foresee at the time of making an offer or the conclusion of the agreement, may give rise to price increases.

Samples / models

1. If the customer has received a sample or model of a product, he can not derive any rights from this other than that it is an indication of the nature of the product, unless the parties have explicitly agreed that the products be supplied conform to the sample or model.

Payments and payment term

1. The customer must have paid the full amount within 30 days after delivery of the product, unless agreed otherwise.
2. Payment terms are considered as fatal payment terms. This means that if the customer has not paid the agreed amount at the latest on the last day of the payment term, he is legally in default, without NemaSync having to send the customer a reminder or to put him in default.
3. NemaSync reserves the right to make a delivery conditional upon immediate payment or to require adequate security for the total amount of the services or products.

Consequences of late payment

1. If the customer does not pay within the agreed term, NemaSync is entitled to charge an interest of 1% per month from the day the customer is in default, whereby a part of a month is counted for a whole month.
2. When the customer is in default, he is also due to extrajudicial collection costs and may be obliged to pay any compensation to NemaSync.
3. The collection costs are calculated on the basis of the Reimbursement for extrajudicial collection costs.
4. If the customer does not pay on time, NemaSync may suspend its obligations until the customer has met his payment obligation.
5. In the event of liquidation, bankruptcy, attachment or suspension of payment on behalf of the customer, the claims of NemaSync on the customer are immediately due and payable.
6. If the customer refuses to cooperate with the performance of the agreement by NemaSync, he is still obliged to pay the agreed price to NemaSync.

Right of recovery of goods

1. As soon as the customer is in default, NemaSync is entitled to invoke the right of recovery with regard to the unpaid products delivered to the customer.
2. NemaSync invokes the right of recovery by means of a written or electronic announcement.
3. As soon as the customer has been informed of the claimed right of recovery, the customer must immediately return the products concerned to NemaSync, unless the parties agree to make other arrangements about this.
4. The costs for the collection or return of the products are at the expense of the customer.

Suspension of obligations by the customer

1. The customer waives the right to suspend the fulfillment of any obligation arising from this agreement.

Right of retention

1. NemaSync can appeal to his right of retention of title and in that case retain the products sold by NemaSync to the customer until the customer has paid all outstanding invoices with regard to NemaSync, unless the customer has provided sufficient security for these payments.
2. The right of retention of title also applies on the basis of previous agreements from which the customer still owes payments to NemaSync.
3. NemaSync is never liable for any damage that the customer may suffer as a result of using his right of retention of title.

Settlement

1. The customer waives his right to settle any debt to NemaSync with any claim on NemaSync.

Retention of title

1. NemaSync remains the owner of all delivered products until the customer has fully complied with all its payment obligations with regard to NemaSync under whatever agreement with NemaSync including of claims regarding the shortcomings in the performance.
2. Until then, NemaSync can invoke its retention of title and take back the goods.
3. Before the property is transferred to the customer, the customer may not pledge, sell, dispose of or otherwise encumber the products.
4. If NemaSync invokes its retention of title, the agreement will be dissolved and NemaSync has the right to claim compensation, lost profits and interest.

Delivery

1. Delivery takes place while stocks last.
2. Delivery of products ordered takes place at the address indicated by the customer.
3. If the agreed price is not paid on time, NemaSync has the right to suspend its obligations until the agreed price is fully paid.
4. In the event of late payment, the customer is automatically in default, and hereby he can not object to late delivery by NemaSync.

Delivery period

1. Any delivery period specified by NemaSync is indicative and does not give the customer the right to dissolution or compensation if this period is not met with, unless the parties have expressly agreed otherwise in writing.
2. The delivery period starts after the customer has signed the agreement, or issued a formal purchase order to NemaSync and is confirmed in writing or electronically by NemaSync to the customer.
3. Exceeding the specified delivery period does not entitle the customer to compensation or the right to terminate the contract, unless NemaSync cannot deliver within 30 days after the agreed upon original delivery date, or if the parties have agreed upon otherwise.

Actual delivery

1. The customer must ensure that the actual delivery of the products ordered by him can take place in time.

Transport costs

1. Transport costs are on behalf of the customer, unless the parties have agreed upon otherwise.

Packaging and shipping

1. If the package of a delivered product is opened or damaged, the customer must have a note drawn up by the forwarder or delivery person before receiving the product. In the absence of which NemaSync may not be held liable for any damage.
2. If the customer himself takes care of the transport of a product, he must report any visible damage to products or the packaging prior to the transport from NemaSync, failing which NemaSync cannot be held liable for any damage, unless the parties have agreed upon otherwise.

Guarantee

1. The warranty relating to products only applies to defects caused by faulty manufacture, construction or material.
2. The warranty does not apply in the event of normal wear and tear and damage resulting from accidents, changes made to the product, negligence or improper use by the customer, or when the cause of the defect can not clearly be established.
3. The risk of loss, damage or theft of the products that are the subject of an agreement between the parties, will pass on to the customer when these products are legally and/or factually delivered, at least are in the power of the customer or of a third party who receives the product for the benefit of the customer.

Cancellation of the contract for an indefinite period of time

1. The customer can terminate an agreement that has been concluded for an indefinite period at any time with due observance of a notice period of 6 calendar months, or if the parties have agreed upon otherwise.

Indemnity

1. The customer indemnifies NemaSync against all third-party claims that are related to the products and/or services supplied by NemaSync.

Complaints

1. The customer must examine a product or service provided by NemaSync as soon as possible for possible shortcomings.
2. If a delivered product or service does not comply with what the customer could reasonably expect from the agreement, the customer must inform NemaSync of this as soon as possible, but in any case within 1 month after the discovery of the shortcomings.
3. The customer gives a detailed description as possible of the shortcomings, so that NemaSync is able to respond adequately.
4. The customer must demonstrate that the complaint relates to an agreement between the parties.
5. If a complaint relates to ongoing work, this can in any case not lead to NemaSync being forced to perform other work than has been agreed.

Giving notice

1. The customer must provide any notice of default to NemaSync in writing.
2. It is the responsibility of the customer that a notice of default actually reaches NemaSync (in time).

Joint and several Customer liabilities

1. If NemaSync enters into an agreement with several customers, each of them shall be jointly and severally liable for the full amounts due to NemaSync under that agreement.

Liability of NemaSync

1. NemaSync is only liable for any damage the customer suffers if and insofar as this damage is caused by intent or gross negligence.
2. If NemaSync is liable for any damage, it is only liable for direct damages that results from or is related to the execution of an agreement.
3. NemaSync is never liable for indirect damages, such as consequential loss, lost profit, lost savings or damage to third parties.
4. If NemaSync is liable, its liability is limited to the amount paid by a closed (professional) liability insurance and in the absence of (full) payment by an insurance company of the damages the amount of the liability is limited to the (part of the) invoice to which the liability relates.
5. All images, photos, colors, drawings, descriptions on the website or made available otherwise are only indicative and are only approximate and can not lead to any compensation and/or (partial) dissolution of the agreement and/or suspension of any obligation.

Expiry period

1. Every right of the customer to compensation from NemaSync shall, in any case, expire within 12 months after the event from which the liability arises directly or indirectly. This does not exclude the provisions in article 6:89 of the Dutch Civil Code.

Dissolution

1. The customer has the right to dissolve the agreement if NemaSync imputably fails in the fulfillment of his obligations, unless this shortcoming does not justify termination due to its special nature or because it is of minor significance.
2. If the fulfillment of the obligations by NemaSync is not permanent or temporarily impossible, dissolution can only take place after NemaSync is in default.
3. NemaSync has the right to dissolve the agreement with the customer, if the customer does not fully or timely fulfill his obligations under the agreement, or if circumstances give NemaSync good grounds to fear that the customer will not be able to fulfill his obligations properly.

Force majeure

1. In addition to the provisions of article 6:75 Dutch Civil Code, a shortcoming of NemaSync in the fulfillment of any obligation to the customer cannot be attributed to NemaSync in any situation independent of the will of NemaSync, when the fulfillment of its obligations towards the customer is prevented in whole or in part or when the fulfillment of its obligations cannot reasonably be required from NemaSync .
2. The force majeure situation referred to in paragraph 1 is also applicable - but not limited to: state of emergency (such as civil war, insurrection, riots, natural disasters, etc.); defaults and force majeure of suppliers, deliverymen or other third parties; unexpected disturbances of power, electricity, internet, computer or telecoms; computer viruses, strikes, government measures, unforeseen transport problems, bad weather conditions and work stoppages.
3. If a situation of force majeure arises as a result of which NemaSync cannot fulfill one or more obligations towards the customer, these obligations will be suspended until NemaSync can comply with it.
4. From the moment that a force majeure situation has lasted at least 30 calendar days, both parties may dissolve the agreement in writing in whole or in part.
5. NemaSync does not owe any (damage) compensation in a situation of force majeure, even if it has obtained any advantages as a result of the force majeure situation.

Intellectual Property rights

1. All intellectual property rights, including copyright, on work or products provided by NemaSync, including – but not exclusively– the hardware, the software, or other results of Services or Products provided by NemaSync or her supplier(s), are held by NemaSync, or her supplier(s) respectively. These rights are not transferable, unless otherwise agreed upon in writing.
2. When the customer has fulfilled all his obligations under the Agreement with NemaSync, the customer obtains an exclusive license to use the result of the Agreement as far as the use is in accordance with the purpose that was agreed upon. When there are no Agreements about the purpose, then the license to the use of the result of the Agreement will be limited to the established intentions, which existed at the time the Agreement was entered. These intentions must have been made known to NemaSync before the Agreement was entered.
3. The Customer is not entitled to use the result of the Agreement in ways beyond the limitations of the Agreement or in ways other than those in the Agreement without prior written permission from NemaSync. In situations where there is use beyond the limitations set forward in the Agreement, or in ways other than those described in the Agreement, including, but not limited to, amendments, garbling or affecting the preliminary or final results of the Assignment, NemaSync is entitled to a compensation for infringement on its rights.
4. NemaSync remains entitled, even after a transfer of rights, to use the result of the Agreement for its own publicity or promotional purposes, respecting the rights of third parties and its customers.

General Provisions

1. Unless agreed otherwise, NemaSync will be entitled at its option, whether including a logo or otherwise, to list the Customer as a reference on its website.
2. If and insofar as there is any inconsistency between these General Terms and Conditions and an Agreement, the provisions of the Agreement will apply.

Changes in the general terms and conditions

1. NemaSync is entitled to amend or supplement these general terms and conditions.
2. Changes of minor importance can be made at any time.
3. Major changes in content will be discussed by NemaSync with the customer in advance as much as possible.

Transfer of rights

1. The customer can not transfer its rights deferring from an agreement with NemaSync to third parties without the prior written consent of NemaSync .
2. This provision applies as a clause with a property law effect as referred to in Section 3:83 (2) Dutch Civil Code.

Consequences of nullity or annulability

1. If one or more provisions of these general terms and conditions prove null or annulable, this will not affect the other provisions of these terms and conditions.
2. A provision that is null or annulable shall, in that case, be replaced by a provision that comes closest to what NemaSync had in mind when drafting the conditions on that issue.

Applicable law and competent court

1. Dutch law is exclusively applicable to all agreements between the parties.
2. The Dutch court in the district where NemaSync is established is exclusively competent in case of any disputes between parties, unless the law prescribes otherwise.