

# GENERAL TERMS AND CONDITIONS OF THE ASSOCIATION OF DUTCH DESIGNERS (BNO) MARCH 2021

## 1 Agreement, offer and confirmation

1.1 These General Terms and Conditions (“General Terms and Conditions”) govern all offers and the preparation, content and performance of all agreements concluded between the Client (the “Client”) and the contractor (the “Designer”). Deviations from these General Terms and Conditions may be agreed on between the Client and the Designer only in writing.

1.2 All offers are without commitment and are valid for 2 (two) months. Prices quoted may be subject to change due to unforeseen changes in the work. Prices are exclusive of VAT. The rates and offers quoted in the offer or other quotations do not automatically apply to future commissions. The Client warrants that the information provided to the Designer by him/her or on his/her behalf and on which the Designer bases the offer is correct and complete.

1.3 Commissions are confirmed in writing by the Client. If the Client fails to do so but consents to the Designer commencing the work commissioned, the terms of the offer are deemed to have been agreed on and these General Terms and Conditions apply. Any subsequent oral agreements and stipulations are not binding on the Designer until he has confirmed them in writing.

## 2 Performance of the agreement

2.1 The Designer must make every effort to perform the work commissioned carefully and independently, to promote the Client’s interests to the best of his or her ability and to aim to achieve a result that is useful to the Client, as can and may be expected of a reasonably and professionally acting designer. To the extent necessary the Designer must keep the Client informed of the progress of the work.

2.2 The Client must do any and all things that are reasonably necessary and/or required to enable the Designer to deliver punctually and properly, such as supplying (or causing the supply of) complete, sound and clear data and/or materials in a timely manner.

2.3 Terms stated by the Designer for the performance of the work commissioned are approximations only, unless otherwise agreed in writing.

2.4 Unless otherwise agreed, the following do not form part of the work commissioned to the Designer:

- a. performing tests, applying for permits and assessing whether the Client’s instructions comply with statutory or quality standards;
- b. investigating any existing rights, including patents, trademarks, drawing or design rights or portrait rights of third parties; and
- c. investigating the possibility of the forms of protection referred to in (b) for the Client.

2.5 Prior to performance, production, reproduction or publication, the parties must give each other the opportunity to check and approve the final draft, prototypes or galley proofs of the result.

2.6 Differences between the (final) result and the agreements made cannot serve as grounds for rejection, discount, damages or dissolution of the agreement if those differences are reasonably of minor importance, taking all the circumstances into account.

2.7 Any complaints must be filed with the Designer in writing at the earliest possible time but no later than 10 (ten) business days after completion of the work commissioned, failing which the Client is deemed to have accepted the result of the work commissioned in its entirety.

## 3 Engagement of third parties

3.1 Unless otherwise agreed, instructions to third parties in the context of the performance of the work commissioned are given by or on behalf of the Client. At the Client’s request the

### CONTACT

info@VANTOT.com  
www.VANTOT.com  
+31 76 700 2134

### STUDIO ADDRESS

Nassausingel 26  
4811 DG Breda  
The Netherlands

### DETAILS

CoC 63047799  
VAT NL855070614B01  
NL23 INGB 0006356598  
BIC INGBNL2A

### BANK ADDRESS

ING Bank N.V.  
Foreign Operations  
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1000 BV Amsterdam

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Designer may act as an agent for the Client's account and risk. The parties may agree on a fee for such agency.

3.2 If the Designer provides an estimate of third-party costs at the Client's request, that estimate is an approximation only. If required, the Designer may apply for quotations at third parties on the Client's behalf.

3.3 If the Designer procures goods or services from third parties in the performance of the work commissioned, for the Designer's own account and risk and on the basis of an express agreement with the Client, whereby those goods or services are delivered, passed on or resold to the Client, these general conditions of and/or any separate agreements made with that supplier also apply to the Client. The Designer will allow the Client to examine the general conditions of and/or separate agreements with the supplier.

3.4 If the Designer gives commissions or instructions to production companies or other third parties in the Client's name or otherwise, the Client will confirm in writing at the Designer's request the approval referred to in Article 2.5 of these General Terms and Conditions.

3.5 The Client may not engage any third parties without consultation with the Designer if that may influence the performance of the work commissioned as agreed on with the Designer. The Parties will consult, if necessary, as to which third parties will be engaged and which work will be assigned to them.

3.6 The Designer is not liable for any errors or defects of products or services of third parties engaged by or on behalf of the Client, irrespective of whether they have been introduced by the Designer. The Client itself must hold those parties accountable. The Designer may assist in that regard if necessary.

## 4 Intellectual and other property rights

4.1 All intellectual property rights to the results arising from the work commissioned vest in the Designer. Insofar as any of such rights can be acquired only by means of an application or registration, the Designer will have the sole and exclusive power to effect that application or registration, unless otherwise agreed. The "intellectual property rights" expressly include copyrights, databank rights, neighbouring rights, trademark rights, design rights, patents, domain name rights, know-how, commercial knowledge, trade secrets, and all similar rights, wherever they arise in the world, whether or not registrable, and including applications for them.

4.2 The parties may agree that the rights referred to in paragraph 1 are transferred in whole or in part to the Client. Such transfer and the conditions, if any, on which the transfer takes place must always be recorded in writing. Until the moment of transfer and payment of the agreed fee for that purpose, a right of use is granted as regulated in Article 5 of these General Terms and Conditions.

4.3 The Designer is entitled at any time to imprint his name on or in, or to remove it from, the result of the work commissioned (or publicity related thereto) or to have his name imprinted on or in, or removed from, the result of the work commissioned, in a manner that is customary for that result. Without the Designer's prior consent the Client may not publish or reproduce the result without identifying the Designer by name.

4.4 Unless otherwise agreed, the original or other results (such as designs, design sketches, drafts, advice, reports, budgets, estimates, specifications, design drawings, illustrations, photographs, prototypes, scale models, templates, prototypes, products and partial products, films audio and video or other presentations, source codes, source files and other materials or (electronic) data files etc.) made by the Designer as part of the work

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info@VANTOT.com  
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commissioned remain the Designer's property, irrespective of whether they have been made available to the Client or to third parties. The Parties may agree on a fee for the transfer of these results.

4.5 On completion of the work commissioned, the Client and the Designer will have no obligation to retain the original or other results produced by the Designer, as referred to in 4.4, unless otherwise agreed.

## 5 Use of the result

5.1 Once the Client has fulfilled all his/her obligations arising from the agreement with the Designer, he/she acquires the right to use the licence for the result of the work commissioned in accordance with its purpose. If no such specific purpose has been agreed on, the right of use is limited to that use of the design for which the commission was (manifestly) given. The right of use is exclusive, unless otherwise apparent from the nature of the agreement or otherwise agreed.

5.2 If the result also relates to works that are subject to third-party rights, the parties will make additional agreements on how the use of those works will be regulated.

5.3 Without the Designer's prior written consent, the Client is not entitled to change the result of the work commissioned, or to use or reuse it in a broader or different manner than agreed, or to allow third parties to do so. The Designer may make that consent subject to conditions, including payment of an additional fee.

5.4 In the event of broader or different use on which no agreement was reached, including any modification, mutilation or infringement of the provisional or final result, the Designer is entitled to compensation on the grounds of infringement of his/her rights of at least three times the agreed fee, or a fee that is proportional to the infringement committed, without losing any other rights.

5.5 Unless the Designer gives prior consent, the Client is not (or no longer) permitted to use the result of the work commissioned or to elaborate or have a third party elaborate on it, and any right of use of the licence granted to the Client in the context of the work commissioned will lapse, unless the consequences conflict with the rules of reasonableness and fairness:

- a. the moment that the Client fails to perform or to fully perform his payment or other obligations under the agreement, or is otherwise in default;
- b. if the work commissioned is terminated prematurely for the reasons referred to in Article 8.1 of these General Terms and Conditions; or
- c. if the Client is declared bankrupt, unless the rights in question have been transferred to the Client in accordance with Article 4.2 of These General Terms and Conditions.

5.6 With due observance of the Client's interests, the Designer may use the results at his/her discretion for his/her own publicity, to secure commissions, for promotional purposes, including use on the internet, websites and social media, competitions and exhibitions, etc., and to obtain them on loan, if physical results are involved.

## 6 Fees and additional costs

6.1 The Designer is entitled to a fee for the performance of the work commissioned. That fee may consist of an hourly rate, a consultancy fee, a fixed amount or a fee agreed between the parties.

6.2 In addition to payment of the agreed fee, the Designer is entitled to reimbursement of any costs incurred by him in the performance of the work commissioned, such as administrative overheads, travel and accommodation expenses, costs of prints, copies, (galley) proofs and

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prototypes, and costs of third parties related to advice, production, supervision, etc. Those costs must be itemised beforehand to the extent possible, unless a mark-up percentage is agreed on.

6.3 If the Designer is required to perform more or other work due to late delivery or non-delivery of complete, sound and clear information and/or materials, any change or error in instructions or briefings, or any external circumstances, such additional work is charged separately on the basis of the Designer's usual fees. The Designer will then inform the Client accordingly beforehand unless that is impossible due to circumstances or the nature of the work does not allow any delay.

## 7 Payment and suspension

7.1 The Designer is responsible for timely invoicing. In consultation with the Client, the Designer may charge the agreed fee and costs as an advance, in the interim or periodically.

7.2 All payments must be made without any deduction, set-off or suspension within 30 days of the invoice date, unless otherwise agreed in writing or stated in the invoice.

7.3 All goods delivered to the Client remain the Designer's property until all the amounts that the Client owes the Designer under the agreement concluded between the parties have been paid to the Designer.

7.4 If the Client fails to pay all or part of the amounts due, it owes statutory interest and out-of-court costs of collection, amounting to at least 10% of the invoice amount, subject to a minimum of € 150, excluding VAT.

7.5 The Designer may suspend the performance of the work commissioned after the term for payment has expired and the Client, after a written demand to make payment within 14 days, fails to make that payment, or if the Designer is forced to conclude on the grounds of a statement or act on the part of the Client that payment will not be made.

## 8 Attributable breach, notice of termination and dissolution of the agreement

8.1 If an attributable breach occurs, the aggrieved party must first give the other party a written notice of default, allowing that other party a reasonable period in which to still comply with his/her obligations, to remedy mistakes, or to limit or undo damage. The notice of default must contain as detailed a description of the breach as possible.

8.2 If the Client gives notice of early termination of the agreement, without any attributable breach on the part of the Designer, or if the Designer dissolves the agreement on the grounds of breach by the Client in the performance of the agreement, the Client is liable for damages in addition to the Designer's fee and the costs incurred in connection with the work performed until that time. In this context any conduct by the Client on the grounds of which the Designer cannot reasonably be required to complete the work commissioned is also regarded as breach.

8.3 The damages referred to in the preceding paragraph of this Article include at least the costs arising from obligations undertaken by the Designer in his own name with third parties for the performance of the work commissioned, as well as 30% (thirty per cent) of the balance of the fee that the Client would owe the Designer if the work commissioned were completed in full.

8.4 Both the Designer and the Client have the right to terminate the agreement in whole or in part with immediate effect, and all amounts due are payable immediately, if a petition in bankruptcy or a petition for a suspension or provisional suspension of payment or for application of the debt rescheduling arrangement is filed in respect of the other party, or if

### CONTACT

info@VANTOT.com  
www.VANTOT.com  
+31 76 700 2134

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The Netherlands

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the other party dies.

8.5 If the Designer's work consists of recurrently performing work of a similar nature, a continuing performance agreement is involved, unless otherwise agreed in writing. Such an agreement may be terminated only by written notice given while observing a reasonable notice period of no less than 3 (three) months, during which period the Client must continue to purchase the customary amount of work from the Designer or compensate the Designer financially for loss of turnover and costs incurred.

## 9 Warranties and indemnities

9.1 The Designer warrants that the result has been designed by him or her or on his or her behalf and, if the result is copyright-protected, that the Designer is the author within the meaning of the Auteurswet (Dutch Copyright Act) and as the copyright owner has power of disposition of the work. The Designer warrants that, as far as he/she knows or reasonably ought to know, the result of the work commissioned does not infringe any third-party rights and is not otherwise unlawful.

9.2 The Client indemnifies the Designer or persons engaged by the Designer in the performance of the work commissioned against any third-party claims arising from the application or use of the results of the work commissioned. This is without prejudice to the Designer's liability towards the Client for failure to comply with the warranties referred to in the preceding paragraph and any other liability as referred to in Article 10 of these General Terms and Conditions.

9.3 The Client indemnifies the Designer against any claim or action relating to intellectual property rights in materials or information supplied by the Client and used in the performance of the work commissioned.

## 10 Liability

10.1 The Designer is liable only for direct damage suffered by the Client that is the direct and sole result of a breach in performing the work commissioned that is attributable to the Designer. The Designer's liability for consequential and indirect damage, including, but not limited to, loss of profits, loss savings, damage to his/her image, corrupted or lost data or materials, or damage due to business interruption is excluded.

10.2 Except in the event of intent or wilful recklessness on the part of the Designer, the Designer's total liability is limited to the fee that he or she charged for the work commissioned, or in any event the part of the work commissioned to which the liability relates. That amount may not exceed EUR 75,000 and is always capped at the amount paid to the Designer by the insurance company in that case. The amount for which the Designer is liable in the case in question is reduced by any sums insured by the Client.

10.3 Any and all liability expires two years from the date on which the work commissioned has ended on the grounds of completion, termination or dissolution.

## 11 Privacy

If the Designer has to process personal data of the Client, or of the Client's customers, for the purpose of the services to be performed, the Designer will be regarded as the 'processor' and the Client as the 'controller' within the meaning of the General Data Protection Regulation (GDPR) and a processing agreement will be concluded.

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## 12 Force majeure

12.1 If one party fails to fulfil his/her obligations but this failure cannot be attributed to him/her (force majeure), that party is not liable and fulfilling that obligation is suspended for as long as the force majeure situation lasts.

12.2 Force majeure includes, but is not limited to, weather conditions, fires, strikes, illness, pandemics, epidemics, war and other violence, hacks, cyber attacks or other technical failures and resultant circumstances, such as government interventions, including quarantine measures, which reasonably prevent one party from fulfilling obligations and lead to delays, as well as delays or failures of suppliers and/or other third parties engaged in the performance of the agreement.

12.3 If one party relies on force majeure, he/she must notify the other party in writing as soon as possible, with reference to the necessary supporting documents/reasons.

12.4 If the force majeure situation has lasted for 60 (sixty) days, either party may terminate all or part of the agreement, insofar as the force majeure situation justifies termination.

12.5 If force majeure occurs, the Designer will be entitled to the portion of the fee for the work that he/she has performed and to be reimbursed for the costs that he/she has already incurred or that are unavoidable, for instance in connection with orders and instructions to third parties that cannot be cancelled any longer without liability for compensation.

## 13 Other provisions

13.1 If the Client wishes to commission the work at the same time to parties other than the Designer or has previously already commissioned the work to another party, he/she must inform the Designer of this in advance.

13.2 The Client is not permitted to transfer or assign to third parties any of the rights under an agreement concluded with the Designer, except in the event of transfer of his/her entire business or with the Designer's prior written consent.

13.3 Both parties must keep confidential any and all confidential information, facts and circumstances that come to their knowledge in the context of the work commissioned, from each other or from any other source, of which they can reasonably understand that their publication or disclosure to third parties might damage the Designer or the Client. The parties must impose the same duty of confidentiality on their employees, or third parties engaged in the performance of the work commissioned, in respect of such facts and circumstances from the other party.

13.4 If any provision of these General Terms and Conditions is void or voided, the other provisions of these General Terms of Conditions continue to apply in full. In that case the parties will consult in order to agree on new provisions to replace the void or voided provisions that are as closely as possible in keeping with the purpose and scope of the void or voided provisions.

13.5 The headings of these General Terms and Conditions have been included for easy reference only and do not form part of these General Terms and Conditions.

13.6 These General Terms and Conditions may be amended at any time. The Designer will inform the Client of any amendments.

13.7 All agreements between the Designer and the Client are governed by Dutch law. The parties will first attempt to settle any dispute by agreement. Unless the parties have expressly agreed in writing on arbitration, the court that has jurisdiction by law or the court in the district in which the Designer has its registered office has jurisdiction to hear and decide on

### CONTACT

info@VANTOT.com  
www.VANTOT.com  
+31 76 700 2134

### STUDIO ADDRESS

Nassausingel 26  
4811 DG Breda  
The Netherlands

### DETAILS

CoC 63047799  
VAT NL855070614B01  
NL23 INGB 0006356598  
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PO Box 1800  
1000 BV Amsterdam

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any disputes between the Designer and the Client.

March 2021

Filed with the Amsterdam Chamber of Commerce by the BNO

#### CONTACT

info@VANTOT.com  
www.VANTOT.com  
+31 76 700 2134

#### STUDIO ADDRESS

Nassausingel 26  
4811 DG Breda  
The Netherlands

#### DETAILS

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NL23 INGB 0006356598  
BIC INGBNL2A

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Foreign Operations  
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1000 BV Amsterdam

# ADDITIONAL CONDITIONS INDUSTRIAL DESIGN 2021

## Explanation

These Additional Conditions may be used for industrial design assignments. They are additions to and derogations of BNO's 2021 General Conditions and it is therefore advisable, insofar as relevant and desired, to expressly include them in the offer in which BNO's 2021 General Conditions are declared applicable. Please note: two options are provided in Article 5.3.

It is essential to bear in mind that any other addition to or derogation of these provisions may have far-reaching consequences for the liability and the coverage, if any, under liability insurance. It is therefore preferable always to submit any other additional or derogating provisions to a legal consultant (of BNO) or to the insurer (or insurance agent) (see also the explanation of BNO's 2021 General Conditions).

censing of existing designs, the Industrial Design Licensing Agreement or the Royalty Agreement can also be used.

For a transfer of rights, the Additional Conditions Intellectual Property rights can be used.

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Specimens:

The following provisions apply in derogation of or in addition to BNO's General Conditions (2021) that govern this offer, a copy of which is enclosed (or: of which you have received a copy).

#### 4 Intellectual property and ownership rights

##### 4.3 Reference to designer and credits

If the result so allows, the client must ensure that the designer's name is stated on the result or its packaging. The manner in which the name must be stated will be determined in consultation.

In the event of publicity concerning the result, the client must ensure that the designer's contribution is clearly apparent. If it has been agreed that third parties will be involved in any change to or elaboration of the result, the client must also obligate such third parties in the event of publicity concerning the result (or an elaboration of the result) to clearly state the designer's contribution.

##### 4.6 Protection and preservation of rights

In the event of infringement of its rights in respect of the result, the designer will, if it so wishes and in order to protect and preserve the rights that vest in the client under this agreement, authorise the client to exercise the rights arising from his copyright and to take action for that purpose both in and out of court, for his own account and in the name of the designer. The parties must provide each other with all the necessary information in taking any measures for this purpose.

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info@VANTOT.com  
www.VANTOT.com  
+31 76 700 2134

#### STUDIO ADDRESS

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4811 DG Breda  
The Netherlands

#### DETAILS

CoC 63047799  
VAT NL855070614B01  
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5 Use of the result

5.3 Changes to the result

In derogation of the provision of Article 5.3, the client will be permitted to make changes to the result (or to have such changes made) or to further elaborate (or cause the elaboration) of the result, provided that the client respects and follows the basic concept and any guidelines given by the designer.

Alternative:

5.3 Changes to the result In addition to the provisions of Article 5.3 that the client may not make any changes to the result without the designer's prior consent, the designer may not withhold that consent if that would be contrary to the rules of reasonableness and fairness. If the client wishes to make any changes, he must first of all enable the designer to make such changes. A fee will be payable in that respect on the basis of the customary fees charged by the designer

5.6 Variations on the result Without the designer's consent the client may not make any variation or derivative of the result or use the result (or elements of the result) in other results or works.

Although this specimen has been drafted with the utmost care, BNO accepts no responsibility for harm or loss of any kind whatsoever that might arise from any defect in the terms of this specimen or from its use.

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www.VANTOT.com  
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CoC 63047799  
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# GENERAL CONDITIONS GOVERNING THE SALE AND DELIVERY OF PRODUCTS (TO BUSINESS CUSTOMERS) 2022

## 1 Applicability of these General Conditions

- 1.1 These conditions apply to all offers, agreements and deliveries regarding products created or offered by the Designer.
- 1.2 The following definitions are used in these General Conditions:
  - a. Designer the design agency that or the designer who sells products;
  - b. Buyer the Designer's counterparty, not being a consumer.
- 1.3 The applicability of any of the Buyer's general conditions is expressly rejected.

## 2 Offers and agreements

- 2.1 An offer or quotation will be without commitment, unless it relates to a Consumer Purchase, and will be valid during the specified term or while stocks last.
- 2.2 Agreements between the Designer and the Buyer will be concluded on written confirmation by the Designer, including confirmation by e-mail. An automatically generated electronic order confirmation will not serve as such confirmation. Unless expressly agreed otherwise, the Designer reserves the right to refuse an order or to attach certain conditions to the delivery.
- 2.3 If the Buyer's acceptance of the offer or quotation differs (even on manifestly minor points) from the proposal contained in the offer or quotation, the Designer will not be bound by it.
- 2.4 The Designer is not obliged to produce part of a combined offer or quotation at a corresponding part of the price stated in the offer.
- 2.5 If there is no prior written confirmation of an order or assignment, the agreement is concluded when the Designer fully or partially complies with a request for delivery from the Buyer, or when the Designer sends an invoice to a Buyer who has requested delivery. The invoice is then deemed to correctly reflect the agreed order.
- 2.6 The Designer will have the right to make use of third parties in the performance of the agreement. Any and all rights and claims stipulated in these Conditions and in any further agreements for the benefit of the Designer will equally apply to any agents and other third parties engaged by the Designer.
- 2.7 The documentation, images, drawings and similar items provided by the Designer remain the Designer's property and may not be copied or duplicated, nor made available to third parties without the Designer's written consent.
- 2.8 The Designer's stated prices, costs and rates exclude turnover tax and any other government- imposed levies.

## 3 Change in circumstances and force majeure

- 3.1 If the prices of raw materials or wages, import duties, taxes or other external costs increase after the conclusion of the agreement (whether or not due to currency fluctuations), the Designer will have the right to adjust the purchase price to that increase.
- 3.2 The Designer must inform the Buyer of such a circumstance as soon as possible, after which the Buyer will have the right to dissolve the agreement within a period of eight (8) days, unless the increase is due to a statutory price increase.
- 3.3 If the Designer is unable to perform all or part of the agreement due to an event of force majeure, the Designer will have the right to dissolve all or part of the agreement or to suspend its obligations until the force majeure situation has ended. The Designer is then not liable towards the Buyer for any damage that the Buyer suffers, regardless of its nature or scope. The Buyer must then pay for any products already delivered.

## 4 Delivery

- 4.1 Specified delivery and other terms are stated for information purposes only and will not be of the essence, unless otherwise expressly agreed in writing. If a term is exceeded, the Buyer must therefore give the Designer written notice of default.
- 4.2 If the Designer requires information from the Buyer for the performance of the agreement, or if full or partial payment in advance has been stipulated, the delivery term will not commence until the Designer has received the correct and full information or the payment in advance.

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info@VANTOT.com  
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## GENERAL CONDITIONS GOVERNING THE SALE AND DELIVERY OF PRODUCTS (TO BUSINESS CUSTOMERS) 2022

4.3 Orders will be delivered carriage paid only if that was expressly agreed. If delivery is not carriage paid, the Designer will have the right to charge freight costs.

4.4 Delivery will take place the moment the products leave the Designer's storage room. The risk in the products delivered will pass to the Buyer on delivery, regardless of the agreements made between the Designer and the Buyer regarding transport and insurance.

4.5 If the products cannot be delivered on the agreed date because of a cause attributable to the Buyer or because the Buyer refuses to take delivery, the Designer may charge the Buyer the resulting costs. The products will then be stored at the Buyer's expense and risk. In that case the Designer will also have the right to dissolve the agreement, without prejudice to his right to claim full damages.

### 5 Retention of title

5.1 All products delivered will remain the Designer's property until the Buyer has fully performed all agreements with the Designer, including the interest, taxes and costs payable under the agreements and/or these general conditions.

5.2 Any amount received from the Buyer will first be allocated to settle all outstanding interest and costs and then to settle the oldest invoices.

5.3 The Buyer may not rent or make available products that have remained the Designer's property pursuant to this clause to third parties and may sell these products to third parties only in the context of the normal conduct of its business.

5.4 The Buyer must keep the products delivered under retention of title carefully and in their actual condition, independently identifiable and as the Designer's recognisable property, and insure these products against risks including fire, explosions, damage and theft. Immediately on the Designer's request, the Buyer must assign all rights against the relevant insurers in this regard to the Designer.

5.5 As long as the Designer is the owner of the products, the Buyer must immediately notify the Designer in writing if any component of the products is lost or damaged, or if the products are attached or a claim is otherwise made against all or any part of the products.

5.6 The Buyer must also inform the Designer where the products that the Designer owns are located immediately on the Designer's request.

5.7 In case of attachment, a provisional or final moratorium on the payment of debts or bankruptcy/ liquidation, the Buyer must immediately inform the attaching bailiff, the administrator or the insolvency practitioner/liquidator of the Designer's property and other rights.

5.8 If the Buyer fails to fulfil its obligations under an agreement concluded with the Designer and the Designer has good reason to believe that the Buyer will fail to fulfil its obligations, the Designer will have the right to take back products delivered from the Buyer or from third parties that hold the products on behalf of the Buyer. In that case the Buyer must fully cooperate.

### 6 Dissolution and return of products

6.1 The Buyer may amend or cancel an order only with the Designer's prior written consent. If the Designer has already incurred costs or will incur costs as a result of the amendment or cancellation, the Designer may charge those cost to the Buyer.

6.2 If it has been agreed that the agreement will be performed in phases, the Designer may suspend performing the components that belong to a subsequent phase, or making partial deliveries, until the Buyer's total payment obligation towards the Designer has been settled.

6.3 The Purchaser may not cancel the delivery of products that involve customisation, such as products made in special quantities or otherwise specially for the Buyer, at the Designer's sole discretion.

6.4 Products delivered may be returned only with the Designer's prior written consent, whereby the Designer will have the right to give instructions regarding the manner of shipment. The direct costs involved in the return shipment of the products in the context of this Article will be payable by the Buyer, unless otherwise expressly agreed in writing. The

#### CONTACT

info@VANTOT.com  
www.VANTOT.com  
+31 76 700 2134

#### STUDIO ADDRESS

Nassausingel 26  
4811 DG Breda  
The Netherlands

#### DETAILS

CoC 63047799  
VAT NL855070614B01  
NL23 INGB 0006356598  
BIC INGBNL2A

#### BANK ADDRESS

ING Bank N.V.  
Foreign Operations  
PO Box 1800  
1000 BV Amsterdam

# GENERAL CONDITIONS GOVERNING THE SALE AND DELIVERY OF PRODUCTS (TO BUSINESS CUSTOMERS) 2022

Designer may wait before making the repayment until the Designer has received the return shipment.

## 7 Payment

7.1 The Designer always has the right to demand full or partial payment in advance or cash on delivery.

7.2 If products are delivered on account, the invoice amount must be paid within fourteen (14) days, without the Buyer being entitled to any discount or setoff.

7.3 Objections against the Designer's invoices or the Designer's performance of the agreement do not suspend the Buyer's payment obligation.

7.4 If the Designer has not received payment in full by the end of the payment period, the Buyer will be in default with no prior notice of default and will owe interest at the statutory commercial rate on the outstanding invoice amount. All costs incurred by the Designer in connection with late payment, such as procedural costs and judicial and extrajudicial costs, including the costs of legal assistance, bailiffs and debt collection agencies, will be payable by the Buyer. The extrajudicial costs are set at a minimum of 10% of the invoice amount, subject to a minimum of €250 excluding VAT.

## 8 Right of suspension and dissolution

8.1 In addition to the provisions regarding force majeure and the provisions of Article 6, the Designer will have the right to suspend (in full or in part) the performance of its obligations under all agreements that exist between the parties or to dissolve those agreements in full or in part without any notice of default or judicial intervention being required:

- a. if the Buyer is in default or the Designer has good reason to believe that the Buyer will not perform its obligations in full and/or in time;
- b. in the event of liquidation, a suspension of payment, a petition for a suspension of payment, bankruptcy or debt rescheduling, or any other circumstance as a result of which the Buyer can no longer freely dispose of its capital; or
- c. if circumstances occur as a result of which it is impossible to perform the agreement or the Designer cannot reasonably be required to continue the agreement in an unamended form.

8.2 In the cases referred to in paragraph 8.1 any obligations of the Buyer will furthermore fall due immediately and the Designer will not be required to pay any damages.

## 9 Guarantees and complaints

9.1 The products to be supplied by the Designer will meet the customer requirements and standards that can reasonably be set at the moment of delivery and for which they are intended in the event of normal use. If applicable, guarantee provisions of suppliers and third parties, such as producers and importers, will apply to the products supplied by the Designer.

9.2 In the event of use outside the Netherlands, the Buyer itself must verify whether the products are suitable for use there and whether they meet the conditions and the applicable statutory and other requirements.

9.3 The Buyer will be required to inspect the products delivered immediately after receipt. Any defects established must be reported to the Designer in writing, stating the reasons, within eight (8) days or in the case of external visible defects immediately.

9.4 If it has been proven that a product is not in conformity with the agreement and the complaint was filed in a timely manner, the Designer may, at its option, replace the product in question, arrange for repairs, or refund the invoice price plus any shipping costs paid.

9.5 Products must be resent in their original packaging, including any accessories and accompanying documentation, and be in their new condition. If the products have been put into use and/or damaged and/or resold after the defects were established, the right to complain and return products will cease to apply.

9.6 The guarantee does not apply:

- a. if and as long as the Buyer is in default towards the Designer;
- b. the Buyer has repaired and/or modified the products personally or had third parties repair and/or modify the products;

### CONTACT

info@VANTOT.com  
www.VANTOT.com  
+31 76 700 2134

### STUDIO ADDRESS

Nassausingel 26  
4811 DG Breda  
The Netherlands

### DETAILS

CoC 63047799  
VAT NL855070614B01  
NL23 INGB 0006356598  
BIC INGBNL2A

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Foreign Operations  
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c. the delivered products have been exposed to abnormal conditions or have been handled carelessly or contrary to the Designer's instructions and/or the instructions on the packaging;

d. the defectiveness is fully or partially because of rules that the government has set or will set regarding the nature or quality of the materials used.

9.7 If the Buyer is of the opinion that the Designer has not performed the agreement punctually, fully or properly, the Buyer must give written notice of this failure to the Designer in the manner as set out in paragraph 3 by registered post, and enforce the resultant claims in court, by means of a summons, within twelve (12) months of the date of the notice, or within twelve (12) months of the date on which that notice should have been given, failing which all the Buyer's rights and claims in this regard will lapse through the expiry of this period.

9.8 All data, designs and images regarding colours, materials, dimensions and finishing will be for information purposes only. Divergences will not be reason for rejection, discount, dissolution of the agreement or damages if such divergences are minor.

### 10 Intellectual property rights and confidentiality

10.1 The Buyer expressly acknowledges that all intellectual and/or industrial property rights in respect of the products and the materials and information made available to the Buyer by the Designer, including samples, packaging, labels and designs (and their appearance), the composition and/or specifications of samples, products and semi-finished products, and technical and commercial know-how, models, moulds, drawings, designs and patterns, vest in the Designer, its supplier or other parties entitled.

10.2 If the Designer manufactures products or packaging on the basis of express instructions given by the Buyer, such as specifications, designs, sketches, models or patterns provided by the Buyer, the Buyer warrants that no third-party rights will be infringed. The Buyer indemnifies the Designer against any third-party claims in this context and will reimburse all costs incurred by the Designer in connection with such claims.

10.3 The Designer and the Buyer undertake to adopt adequate measures to ensure secrecy with regard to each other's confidential data that they become aware of while performing the agreement.

### 11 Liability for damage

11.1 The Designer will not be liable for damage caused:

- a. by incompetent use of the products delivered or use for a purpose other than that for which they are suitable by objective standards;
- b. because the Designer used incorrect or incomplete data provided by or on behalf of the Buyer;
- c. third parties engaged in a performance of the agreement at the Buyer's request or with the Buyer's consent;
- d. materials or services provided by third parties at the Buyer's request or with the Buyer's consent; or
- e. misunderstandings, damage, delays or the improper receipt of orders and notifications due to the use of the Internet or any other means of communication (whether or not electronic).

11.2 Only direct loss attributable to the Designer will qualify for compensation. Any and all liability for indirect loss, including but not limited to consequential loss, loss of profits, damaged or lost data or materials, and loss of proceeds is excluded.

11.3 Insofar as the Designer is liable for the reimbursement of loss, that loss will be limited to the invoice amount for the delivery or part of the delivery in question, on the understanding that that amount will not exceed the amount insured by the designer and will in any event be limited to the amount that the insurer pays the Designer in the case in question.

11.4 The Buyer indemnifies the Designer against all claims from third parties that incur losses in connection with the performance of the agreement or the delivered products unless it is legally established that these claims arise from the Designer's intent or gross negligence and it is moreover demonstrated that no blame can be attributed to the Buyer.

11.5 The limitations recorded in Article 11.1 to 11.4 will not apply if the loss is due to intent or gross negligence on the part of the Designer.

#### CONTACT

info@VANTOT.com  
www.VANTOT.com  
+31 76 700 2134

#### STUDIO ADDRESS

Nassausingel 26  
4811 DG Breda  
The Netherlands

#### DETAILS

CoC 63047799  
VAT NL855070614B01  
NL23 INGB 0006356598  
BIC INGBNL2A

#### BANK ADDRESS

ING Bank N.V.  
Foreign Operations  
PO Box 1800  
1000 BV Amsterdam

## GENERAL CONDITIONS GOVERNING THE SALE AND DELIVERY OF PRODUCTS (TO BUSINESS CUSTOMERS) 2022

### 12 Dutch law and competent court

12.1 This Agreement is governed by Dutch law, also if an obligation is performed abroad in full or in part or if the Buyer has its place of residence there. The applicability of the Vienna Sales Convention is excluded.

12.2 In the event of disputes, the court of the place where the Designer has its registered office will be the competent court, unless mandatory rules of law provide otherwise. The Designer will nevertheless have the right to submit the dispute to the court that has jurisdiction according to the law.

12.3 The parties will submit a dispute to the court only after they have made every effort to settle the dispute in consultation.

### 13 Other provisions

13.1 The Dutch text of these General Conditions will at all times be decisive in the interpretation of these General Conditions.

13.2 Amendments and/or additions to any provision of the agreement and/or these General Conditions can only be agreed in writing. The other provisions will remain fully in force.

13.3 Unless expressly agreed otherwise, if an amendment and/or addition as referred to in the previous paragraph is agreed, this amendment and/or addition applies to that agreement only.

13.4 If the Designer uses additional conditions or any provisions that conflict with these General Conditions, that will not affect the validity and applicability of other provisions of these General Conditions.

13.5 These General Terms and Conditions are a translation of the *Verkoop- en leveringsvoorwaarden Producten t.b.v. zakelijke afnemers* of the Association of Dutch Designers (BNO). In the event of any discrepancies between these two Terms and Conditions, the Dutch text will prevail.

#### CONTACT

info@VANTOT.com  
www.VANTOT.com  
+31 76 700 2134

#### STUDIO ADDRESS

Nassausingel 26  
4811 DG Breda  
The Netherlands

#### DETAILS

CoC 63047799  
VAT NL855070614B01  
NL23 INGB 0006356598  
BIC INGBNL2A

#### BANK ADDRESS

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Foreign Operations  
PO Box 1800  
1000 BV Amsterdam

# GENERAL CONDITIONS GOVERNING THE SALE AND DELIVERY OF PRODUCTS (TO CONSUMERS, INCLUDING DISTANCE SELLING)

## 1 Applicability of these General Conditions

1.1 These conditions apply, to the exclusion of any other conditions, to all offers, agreements and deliveries regarding products created or offered by the Designer.

1.2 The following definitions are used in these General Conditions:

- a. Designer the design agency that or the designer who sells products;
- b. Consumer a Consumer not acting in the conduct of a profession or business;
- c. Consumer Purchase a purchase between a Designer and a Consumer;
- d. Distant Purchase a Consumer Purchase whereby the agreement is concluded via the Internet or by telephone, fax or post.

## 2 Offers and agreements

2.1 An offer or quotation will be valid during the specified term or while stocks last.

2.2 Agreements between the Designer and the Consumer are concluded when the Designer confirms the order in writing, including confirmation by email. Unless expressly stated otherwise, the Designer reserves the right to refuse an order or to attach certain conditions to the delivery.

2.3 In the case of distance selling, agreements between the Designer and the Consumer will be concluded on acceptance of the offer by the Consumer and compliance with the stipulated conditions.

2.4 The Designer will have the right to make use of third parties in the performance of the agreement. Any and all rights and claims stipulated in these Conditions and in any further agreements for the benefit of the Designer will equally apply to any agents and other third parties engaged by the Designer.

## 3 Price adjustments

3.1 If the prices of raw materials or wages, import duties, taxes or other external costs increase after the conclusion of the agreement (whether or not due to currency fluctuations), the Designer will have the right to adjust the purchase price to that increase.

3.2 The Designer must inform the Consumer of such a circumstance as soon as possible, after which the Consumer will have the right to dissolve the agreement, unless it has been stipulated that the delivery will take place more than three (3) months after the purchase or the increase is due to a statutory price increase.

## 4 Delivery

4.1 The Designer will state a delivery period, absent which a 30-day delivery period will apply. Specified delivery and other terms will not be of the essence, unless otherwise expressly agreed in writing. If a term is exceeded, the consumer must provide a further term in which to deliver. If that term is also exceeded, the consumer may dissolve the agreement.

4.2 If the Designer requires information from the Consumer for the performance of the agreement, or if full or partial payment in advance has been stipulated, the delivery period will not commence until the Designer has received the correct and full information or the payment in advance. The delivery period for distance selling commences after the agreement has been concluded.

4.3 Delivery to consumers will take place in the manner stated by the Designer during the purchase process and at the address stated by the Consumer upon the conclusion of the agreement, including delivery at the post office or at neighbours/third parties specified by the Consumer on the grounds of absence. The risk in the products delivered will pass to the Consumer on the moment of delivery.

### CONTACT

info@VANTOT.com  
www.VANTOT.com  
+31 76 700 2134

### STUDIO ADDRESS

Nassausingel 26  
4811 DG Breda  
The Netherlands

### DETAILS

CoC 63047799  
VAT NL855070614B01  
NL23 INGB 0006356598  
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### BANK ADDRESS

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4.4 If the Consumer refuses to take delivery, the Designer may charge him the resulting costs. In that case the Designer will also have the right to dissolve the agreement, without prejudice to his right to claim full damages.

### 5 Retention of title

All products delivered will remain the Designer's property until the Consumer has fulfilled all his obligations towards the Designer under the agreement.

### 6 Dissolution, cancellation and return of products

6.1 After the order has been confirmed, the Consumer may amend or cancel it only with the Designer's prior consent. If the Designer has already incurred costs or will incur costs as a result of the amendment or cancellation, the Designer may charge those costs to the Consumer.

6.2 In the case of distance selling, the Consumer has the right within fourteen (14) working days after receipt of the product to cancel the purchase in writing without stating any reasons, by means of an unequivocal statement or using the model cancellation form included as Appendix I under these general conditions.

6.3 The cooling-off period referred to in paragraph 2 commences on the day after the Consumer, or a third party designated by the Consumer, who is not the carrier, has received the product, or:

- a. if the Consumer has ordered several products in the same order: the day on which the Consumer, or a third party designated by the Consumer, has received the last product;
- b. if the delivery of a product consists of several consignments or components: the day on which the Consumer, or a third party designated by the Consumer, has received the last consignment or the last component;

6.4 The Consumer bears the risk and burden of proof of correctly and punctually exercising the right to cancel the order.

6.5 If the purchase price and shipping costs have already been paid, they must be repaid as soon as possible but no later than fourteen (14) days after the Designer was informed that the Consumer wishes to cancel the distance purchase, unless the Designer has reason to believe that the products returned have already been opened, even though that was not necessary in order to assess the product, or used, or have been damaged due to any act on the part of the Consumer. Repayment must be made using the same means of payment as that by which the original transaction was made unless the Consumer expressly agrees otherwise.

6.6 The Consumer must return the product immediately or in any event no later than fourteen (14) days after the day on which the Consumer informed the Designer of its decision to cancel the agreement. The product must be returned to the Designer undamaged, with all the accompanying accessories, and in its original condition.

6.7 The Designer may wait before making the repayment until it has received the product or the Consumer has demonstrated that the product has been returned, whichever is sooner.

6.8 Article 6.2 will not apply to the Distance Purchase of:

- a. products whose price is subject to fluctuations on the financial market beyond the Designer's control;
- b. products that:
  - 1) were produced in accordance with the Consumer's specifications;
  - 2) are clearly of a personal nature;
  - 3) cannot be returned due to their nature; or

#### CONTACT

info@VANTOT.com  
www.VANTOT.com  
+31 76 700 2134

#### STUDIO ADDRESS

Nassausingel 26  
4811 DG Breda  
The Netherlands

#### DETAILS

CoC 63047799  
VAT NL855070614B01  
NL23 INGB 0006356598  
BIC INGBNL2A

#### BANK ADDRESS

ING Bank N.V.  
Foreign Operations  
PO Box 1800  
1000 BV Amsterdam



## GENERAL CONDITIONS GOVERNING THE SALE AND DELIVERY OF PRODUCTS (TO CONSUMERS, INCLUDING DISTANCE SELLING)

4) are subject to rapid spoilage or ageing.

c. audio and video recordings and software if the Consumer has broken the seal;

d. newspapers or magazines; or

e. services provided with the Consumer's approval before the end of the period of seven (7) working days.

6.9 Unless distance selling has occurred and the Consumer has complied with Article 6, paragraph 6, products delivered may be returned only with the Designer's prior written consent, in the manner stated by the Designer during the purchase process.

6.10 The direct costs involved in the return shipment of the products in the context of this Article will be payable by the Buyer, unless otherwise expressly agreed in writing.

### 7 Payment

7.1 The Designer has the right to demand full or partial payment in advance or cash on delivery. In case of distance selling, the Designer has the right to request up to 50% of the purchase price as an advance payment.

7.2 If products are delivered on account, the invoice amount must be paid within fourteen (14) days, without the Consumer being entitled to any discount or setoff.

7.3 If the Designer has not received (full) payment at the end of the payment period, the Consumer will be in default and will owe interest equal to the statutory interest rate that applies to consumer transactions. All costs incurred by the Designer in connection with late payment, such as procedural costs and judicial and extrajudicial costs, including the costs of legal assistance, bailiffs and debt collection agencies, will be payable by the Consumer. The extrajudicial costs will be charged on the basis of the Extrajudicial Collection Costs Decree. The fees in that Decree are:

¼ Minimum rate €40

¼ 15% on the first €2,500

¼ 10% on the next €2,500

¼ 5% on the next €5,000

¼ 1% on the next €190,000

¼ 0.5% on the excess of the principal, subject to a maximum of €6,775

7.4 Before charging collection costs, the Designer will send the consumer a demand for payment in which the Designer is given a period of fourteen (14) days after the day of the demand for payment in which to pay the claim after all.

### 8 Right of suspension and dissolution

8.1 In addition to the provisions regarding force majeure and the provisions of Article 12, the Designer will have the right to suspend (in full or in part) the performance of its obligations under all agreements that exist between the parties or to dissolve those agreements in full or in part without any notice of default or judicial intervention being required:

a. if the Consumer is in default or the Designer has good reason to believe that the Consumer will not perform its obligations in full and/or in time;

b. in the event of liquidation, a suspension of payment, a petition for a suspension of payment, bankruptcy or debt rescheduling, or any other circumstance as a result of which the Consumer can no longer freely dispose of its capital; or

c. if circumstances occur as a result of which it is impossible to perform the agreement or the Designer cannot reasonably be required to continue the agreement in an unamended form.

8.2 In the cases referred to in paragraph 8.1 any obligations of the Consumer will furthermore fall due

#### CONTACT

info@VANTOT.com  
www.VANTOT.com  
+31 76 700 2134

#### STUDIO ADDRESS

Nassausingel 26  
4811 DG Breda  
The Netherlands

#### DETAILS

CoC 63047799  
VAT NL855070614B01  
NL23 INGB 0006356598  
BIC INGBNL2A

#### BANK ADDRESS

ING Bank N.V.  
Foreign Operations  
PO Box 1800  
1000 BV Amsterdam

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immediately and the Designer will not be required to pay any damages. The latter will not apply in the event of dissolution on the grounds of circumstances for which the Consumer cannot be blamed.

### 9 Guarantees and complaints

9.1 The products to be supplied by the Designer will meet the customer requirements and standards that can reasonably be set at the moment of delivery and for which they are intended in the event of normal use. If applicable, guarantee provisions of suppliers and third parties, such as producers and importers, will apply to the products supplied by the Designer unless mandatory law dictates otherwise.

9.2 If the product is used outside the Netherlands, the Consumer must verify whether the products are suitable for use there and whether they meet the conditions and the applicable statutory and other requirements.

9.3 The Consumer will be required to inspect the products delivered immediately after receipt. Any defects established must be reported to the Designer in writing, stating the reasons, within two (2) months or in the case of external defects immediately.

9.4 If it has been proven that a product is not in conformity with the agreement and the complaint was filed in a timely manner, the Designer may, at its option, replace the product in question, arrange for repairs, or refund the invoice price plus any shipping costs paid.

9.5 All data, designs and images relating to colours, materials, dimensions and finishing will be for information purposes only. Divergences will not be reason for rejection, discount, dissolution of the agreement or damages if such divergences are minor.

### 10 Intellectual property rights

10.1 The Consumer expressly acknowledges that all intellectual and/or industrial property rights in respect of the products and the products, materials and information made available to the Consumer by the Designer, including samples, packaging, labels and designs (and their appearance), the composition and/or specifications of samples, products and semi-finished products, as well as technical and commercial know-how, models, moulds, drawings, designs and patterns, vest in the Designer, its supplier or other parties entitled.

10.2 If the Designer manufactures products or packaging on the basis of express instructions given by the Consumer, such as specifications, designs, sketches, models or patterns provided by the Consumer, the Consumer warrants that no third-party rights will be infringed. The Consumer indemnifies the Designer against any third-party claims in this context and will reimburse all costs incurred by the Designer in connection with such claims.

### 11 Liability for damage

11.1 The Designer will not be liable for damage caused:

- a. by incompetent use of the products delivered or use for a purpose other than that for which they are suitable by objective standards;
- b. because the Designer used incorrect or incomplete data provided by or on behalf of the Consumer;
- c. third parties engaged in a performance of the agreement at the Consumer's request or with the Buyer's consent;
- d. materials or services provided by third parties at the Consumer's request or with the Consumer's consent; or

#### CONTACT

info@VANTOT.com  
www.VANTOT.com  
+31 76 700 2134

#### STUDIO ADDRESS

Nassausingel 26  
4811 DG Breda  
The Netherlands

#### DETAILS

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VAT NL855070614B01  
NL23 INGB 0006356598  
BIC INGBNL2A

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e. misunderstandings, damage, delays or the improper receipt of orders and notifications due to the use of the Internet or any other means of communication (whether or not electronic).

11.2 Only direct loss attributable to the Designer will qualify for compensation. Any and all liability for indirect loss, including but not limited to consequential loss, loss of profits, damaged or lost data or materials, and loss of proceeds is excluded. In the case of Consumer Purchase the scope of this provision will be limited to that permitted on the basis of Article 7:24(2) of the Dutch Civil Code that can reasonably be set at the moment of delivery and for which they are intended in the event of normal use. If applicable, guarantee provisions of suppliers and third parties, such as producers and importers, will apply to the products supplied by the Designer unless mandatory law dictates otherwise.

11.3 Insofar as the Designer is liable for the reimbursement of loss, that loss will be limited to the invoice amount for the delivery or partial delivery in question, on the understanding that that amount will not exceed the amount insured by the designer and will in any event be limited to the amount that the insurer pays the Designer in the case in question.

11.4 The Consumer indemnifies the Designer against any and all claims from third parties that incur losses in connection with the performance of the agreement and for the cause of which the Consumer is to blame.

11.5 The limitations recorded in Article 11.1 to 11.14 will not apply:

- a. if the loss is due to intent or gross negligence on the part of the Designer or its executive or non-executive subordinates;
- b. in the event of product liability towards a Consumer within the meaning of Book 6, Part 3, Chapter 3, of the Dutch Civil Code.

### 12 Force majeure

12.1 If the Designer is unable to perform the agreement due to an event of force majeure, it will have the right to suspend its obligations until the event of force majeure has ended. If that period lasts longer than two (2) months, either of the parties will have the right to dissolve the agreement in respect of the products affected by the event of force majeure, without being required to compensate the loss incurred by the other party. In that case the Consumer will be required to pay for the products already delivered.

12.2 In these General Conditions, 'force majeure' means, among other things, in addition to the definition of that term in the law and in case law, all external causes beyond the Designer's control, either foreseen or unforeseen, as a result of which the Designer is unable to fulfil its obligations.

### 13 Complaints procedure for distance selling

13.1 The Consumer must submit complaints relating to the performance of the agreement, fully and clearly described, to the Designer within a reasonable period of discovering the defects.

13.2 If the Consumer is dissatisfied with how the Designer has handled the complaint, the Consumer can submit the complaint to the Disputes Committee through the European ODR Platform: <http://www.ec.europa.eu/consumers/odr>.

### 14 Dutch law and competent court

14.1 This Agreement is governed by Dutch law, also if an obligation is performed abroad in full or in part or if the Consumer resides there. The applicability of the Vienna Sales Convention is excluded.

14.2 In the event of disputes, the court of the Consumer's place of residence will be the competent court.

#### CONTACT

info@VANTOT.com  
www.VANTOT.com  
+31 76 700 2134

#### STUDIO ADDRESS

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4811 DG Breda  
The Netherlands

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ING Bank N.V.  
Foreign Operations  
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14.3 The parties will submit a dispute to the court only after they have made every effort to settle the dispute in consultation.

### 15 Other provisions

15.1 The Dutch text of these General Conditions will at all times be decisive in the interpretation of these General Conditions.

15.2 Amendments and/or additions to these General Conditions will be valid and applicable only if recorded in writing. If the Designer uses additional conditions or any provisions that conflict with these General Conditions, that will not affect the validity and applicability of other provisions of these General Conditions.

15.3 These General Terms and Conditions are a translation of the Verkoop- en leveringsvoorwaarden Producten (t.b.v. consumenten, incl. koop op afstand) of the Association of Dutch Designers (BNO). In the event of any discrepancies between these two Terms and Conditions, the Dutch text will prevail.

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#### BANK ADDRESS

ING Bank N.V.  
Foreign Operations  
PO Box 1800  
1000 BV Amsterdam

## GENERAL CONDITIONS GOVERNING THE SALE AND DELIVERY OF PRODUCTS (TO CONSUMERS, INCLUDING DISTANCE SELLING)

Appendix I – Model Cancellation Form – for Consumers

(Only complete and return this form if you wish to cancel the purchase agreement)

To:

[Designer's name]

[Designer's address]

Email address: [Designer's email address]

- I/We\* hereby notify you that I/we wish to cancel our agreement to purchase the following products: [details of product(s)]\* under order number [order number]\*.

- Received on\* [date of receipt]

- [Name of Consumer(s)]

- [Address of Consumer(s)]

- [Signature of Consumer(s)] (only if this form is submitted on paper/by post)

\* Complete what is applicable.

#### CONTACT

info@VANTOT.com  
www.VANTOT.com  
+31 76 700 2134

#### STUDIO ADDRESS

Nassausingel 26  
4811 DG Breda  
The Netherlands

#### DETAILS

CoC 63047799  
VAT NL855070614B01  
NL23 INGB 0006356598  
BIC INGBNL2A

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ING Bank N.V.  
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