

Terms and conditions of delivery of the Vandoren

These conditions consist of the Association of Mechanical and Electrical Engineering (FME) terms and conditions of delivery with additions from the Vandoren.

TRANSLATION of the 'General terms and conditions of sale and delivery for the technology industry'. Only the Dutch text of these conditions is authentic. In case of ambiguities or doubts as to the meaning of a certain part or paragraph or differences with the Dutch text, the Dutch text will be decisive.

General terms and conditions of sale and delivery for the technology industry

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Article I General

1. If these terms and conditions form part of offers and agreements for the performance of deliveries and/or provision of services by a supplier to a buyer, all provisions in these terms and conditions shall apply between these parties, insofar as they have not been deviated from by an express written agreement between the parties. Any reference by the buyer to its own purchasing or other conditions is expressly rejected by the supplier.
2. In these terms and conditions, the terms below have the stated meaning:
 - Product: the performance by the supplier for the buyer, such as delivery of items, assembly of goods delivered by the supplier or otherwise, contracting of work, maintenance, repairs and services, such as advice and inspection;
 - Item: a tangible object, including any software contained therein;
 - Software: only software included in the delivered item;
 - In writing/written: by letter, email message and in any other manner agreed by the parties, other than orally;
 - Extra work: any performance by the supplier in consultation with the buyer, whether or not in writing, carried out in addition to the agreement;
 - Price: the price of the product as set out in Article 4.

Article II Offer

1. Any offer made by the supplier is non-binding and can be revoked up to 3 working days after acceptance.
2. Any offer is based upon performance of the agreement by the supplier under normal conditions and during normal working hours.

Article III Agreement

1. Without prejudice to Article 2(1), the agreement is concluded if the acceptance is in accordance with the offer. If the acceptance deviates from the offer, the contract is concluded only after the supplier has expressly accepted these deviations.
2. Information stated in product documentation, illustrations, drawings, dimensional and weight specifications, etc. are binding only if and insofar as they are explicitly included in an offer or order confirmation from the supplier or in a contract signed by the parties.
3. Oral promises/agreements shall bind the supplier only insofar as they have been made by an authorised representative of the supplier or confirmed in writing by such a representative.

Article IV Price

1. Unless agreed otherwise in writing, the agreed price is inclusive of turnover tax and other government charges applicable to the sale and delivery and based on delivery ex works according to the Incoterms in force on the date of offer. 'Works' means the premises of the supplier, as designated by the supplier.
2. If, after the date of conclusion of the agreement, one or more of the cost price factors should increase - even if this is due to foreseeable circumstances - the supplier is entitled to increase the price accordingly.
3. The supplier may charge for extra work separately as soon as the amount to be charged for it is known to the supplier. For the calculation of extra work, paragraphs 1 and 2 shall apply mutatis mutandis.
4. Costs of loading, unloading and transport of raw materials, semi-finished products, models, tools and other items made available by the buyer are not included in the price.
5. If it has been agreed that the supplier will assemble the product, the price is calculated including assembly, except for the costs set out in Article 7(3) and (5).

Article V Intellectual property/confidentiality

1. All intellectual property rights to the product, its design and the drawings, calculations, descriptions, technical documents, models, tools and the like made for design, production and use of the product are vested in the supplier or, as the case may be, in a third party that has granted the supplier a licence to use these rights. This also applies if the product has been developed specifically for the buyer, unless agreed otherwise in writing. The buyer acquires a non-exclusive, transferable right to use these intellectual property rights that is unlimited in time, but only for the delivered product and subject to any limitations in underlying licences granted by third parties. The supplier is not obliged to provide the buyer with the source code of or updates for software.
2. Technical, commercial and financial information and information marked as confidential or which by its nature should be designated as confidential, disclosed by one party in writing or orally to the other party, shall be treated as confidential by the other party. The information will therefore not be used by the other party for any purpose other than that for which it was provided without the written consent of the one party. The information may not be reproduced or transferred, communicated or disclosed to any third party.

Article VI Delivery period

1. If the parties have agreed on a specific delivery period, this period starts as soon as the agreement has been entered into and also all conditions to be fulfilled by the buyer prior to the start of the supplier's performance of its obligations have been fulfilled by the buyer, such as provision to the supplier of the necessary documents and data, obtaining permits, carrying out the necessary formalities and payment of an amount due in advance. If, instead of a period, a specific delivery date, week or month has been agreed, it shall be reasonably moved in time.
2. The product shall be deemed delivered in terms of the delivery period when, if acceptance tests have been agreed at the supplier's premises, it is ready for these tests and in other cases when the item is ready for shipment and the buyer has been notified of this in writing and, in the case of performance other than delivery of an item, when the performance has been delivered.
3. The delivery period is based on the working conditions prevailing at the time the agreement is concluded and on timely delivery of the items and/or services ordered by the supplier for the execution of the work. If a delay arises through no fault of the supplier as a result of changes in said working conditions or because items and/or services ordered in time for the execution of the work are not delivered on time, the delivery period shall be extended to the extent necessary.
4. If performance of the agreement is delayed due to an act or omission by the buyer or due to circumstances attributable to the buyer, the supplier may extend the delivery period by a period that is necessary, taking all circumstances into account. This applies even if the cause of the delay does not occur until after the agreed delivery time.
5. Exceeding the delivery period shall not entitle the buyer to terminate the agreement in whole or in part or to claim damages. However, if this overrun exceeds 16 weeks or will exceed 16 weeks according to the supplier's notification, the buyer may terminate the agreement by notifying the supplier in writing. The buyer is then entitled, to the extent applicable, to reimbursement of the part of the price already paid and to compensation for the damage suffered by it, up to a maximum of 15 per cent of the price. If partial delivery has already taken place, the contract can only be partially dissolved after 16 weeks, namely for the part not yet delivered, unless the part already delivered is not independently usable for the buyer. In case of partial termination, the buyer shall be entitled, to the extent applicable, to reimbursement of the part of the price relating to the undelivered part and to compensation. For this compensation, the aforementioned maximum of 15% shall in that case be calculated on the part of the price relating to the undelivered part. If the delivery time has been exceeded due to force majeure, Article 13 shall apply.
6. If the buyer remains in default with respect to buying the product after a notice of default has been given, the supplier is entitled to charge the buyer for the resulting costs and damage, without prejudice to the supplier's rights under Article 14. The buyer is then further obliged to pay the price as if delivery had taken place according to the agreed delivery period.

Article VII Assembly

1. If it has been agreed that the supplier shall take care of the assembly of an item, the buyer is responsible for the correct execution and timely availability of all structures, facilities and conditions necessary for the assembly of the item and the proper functioning of the item in its assembled state.
2. In any case, the buyer shall ensure at his own expense and risk that:
 - a) the supplier's staff can start the work according to the agreed schedule and can work during normal working hours; to the extent that the supplier deems it necessary, work may also be carried out outside normal working hours, provided this is reported to the buyer in writing within a reasonable period of time;
 - b) it informs the supplier in writing and in good time before the start of assembly of all safety regulations applicable at the place of assembly;
 - c) assembly can be carried out in a healthy and safe environment;
 - d) before starting assembly, all necessary safety measures are taken and upheld during assembly;
 - e) the supplier's staff has access to proper sanitary facilities;
 - f) All of the necessary auxiliary personnel, cranes, lifting and hoisting equipment, transport and auxiliary equipment, machinery, operating materials (such as fuels, oils, greases, gas, water, electricity, steam, compressed air, heating and lighting) and the measuring and testing equipment normally in use for the buyer's business shall be available in good time at the assembly site;
 - g) sufficient office space shall be available at the assembly site for the supplier;
 - h) sound and adequately secured digital infrastructure and internet facilities, as necessary, shall be available;
 - i) sufficient storage space is available to protect against theft, loss and damage of the tools and equipment intended for assembly and the personal property of the supplier's personnel;
 - j) access roads to the assembly site are suitable for the necessary transport of the item to be assembled and the supplier's assets.
3. Damage and costs that arise for the supplier and/or the buyer due to one of the obligations stated in this article not being fulfilled or not being fulfilled in a timely manner, are for the buyer's account.
4. If the supplier does provide help and assistance - of whatever kind - during the assembly, without having been commissioned to do so, this will be at the buyer's risk.
5. Costs incurred by the supplier due to unworkable weather shall be borne by the buyer.

Article VIII Inspection and acceptance testing

1. The buyer shall inspect the product no later than 7 days after delivery as referred to in Article 6(2). If assembly has been agreed upon, the buyer shall inspect the proper execution thereof no later than 5 days after assembly. If the applicable deadline has passed without written and specified notification of justified complaints, the product shall be deemed to have been accepted.
2. If acceptance tests have been agreed upon, the buyer shall, after the delivery referred to in Article 6(2), give the supplier the opportunity to make the necessary preparations and make such changes as the supplier deems necessary. The acceptance tests shall be held in the presence of the buyer immediately after the supplier's request to do so. The costs of acceptance tests shall be borne by the buyer. However, the supplier shall bear the costs of its own staff and its other representatives. If the acceptance tests have been carried out without a justified complaint or if the buyer does not fulfil the aforementioned obligations, the product shall be deemed to have been accepted.
3. The buyer shall provide the necessary facilities, support and materials for the acceptance tests, for the preparations and changes referred to in paragraph 2, including those referred to in Article 7(2)(f), and representative samples of any materials to be processed or incorporated in sufficient quantity, on time and free of charge at the place specified by the supplier. If the buyer does not comply, the product shall be deemed to have been accepted.
4. The supplier shall prepare a report of the acceptance tests which shall be sent to the buyer. If the buyer was not represented at the tests, after having been invited to do so in good time and in writing by the supplier, the test report shall be deemed by him to be an accurate reflection.
5. If the acceptance tests show that the product does not comply with the agreement, the supplier shall eliminate the deficiencies as soon as possible. If the buyer requests this in writing, new acceptance tests will be carried out subsequently in accordance with paragraphs 2 to 4.
6. In case of minor defects that do not affect the proper functioning of the product, the product shall be deemed to have been accepted regardless of these defects. The supplier will eliminate these minor defects as soon as possible.
7. The buyer is not authorised to use the product or any part thereof before acceptance. If the buyer does so without the supplier's written consent, the product shall be deemed to have been accepted.
8. Without prejudice to Article 11, acceptance under the preceding paragraphs excludes any claim by the buyer based on a deficiency in the supplier's delivery obligation.

Article IX Passing of risk and retention of title

1. Once the product is deemed to have been delivered within the meaning of Art. 6(2), the buyer bears the risk for all damage that may be caused to or by this product, except to the extent that the damage is attributable to intent or deliberate recklessness of the supplier's employees that are part of the company management.
2. The title to the delivered item shall pass to the buyer as soon as all that is owed by the buyer to the supplier for deliveries and related work, including interest and costs, has been paid to the supplier in full. In case of late payment, the supplier may take back the delivered item.
3. When exercising the retention of title under paragraph 2, the supplier shall have unhindered access to the delivered item. The buyer shall then provide the supplier with all of the cooperation needed for it to take back the item, including disassembly.

Article X Payment

1. Unless agreed otherwise in writing, payment of the purchase price shall be made within 30 days after the invoice date. Invoicing takes place in the following 2 instalments:
 - 1/3 of the price after conclusion of the agreement;
 - 2/3 of the price after delivery under Article 6(2).
2. Payment of extra work shall take place no later than 7 days after it has been invoiced to the buyer.
3. All payments shall be made without deduction, suspension or set-off in the manner determined by the supplier.
4. If the buyer fails to pay on time, it shall be in default by operation of law and the supplier shall be entitled, without giving notice of default, to charge interest as from the due date at a rate of 3 points above the statutory interest rate for trade agreements applicable in the Netherlands, as is referred to in Section 6: 119a and Section 6:120(2) of the Dutch Civil Code, and all judicial and extrajudicial costs.

Article XI Product defects

1. The product must comply with the agreement. The supplier is obliged to eliminate any deviation therefrom (hereinafter referred to as 'defect(s)') arising from improper or faulty design or material or poor workmanship, in accordance with this Article 11. Unless agreed otherwise, any infringement of intellectual property rights of a third party applicable in the Netherlands is also considered a defect. The obligation to remove the defect only applies to defects in the product that are not observable during inspection and (if agreed) acceptance tests, of which the buyer proves that they occurred within 6 months after delivery according to Article 6(2).
2. In case of assembly of an item delivered by the supplier, the 6-month period stated in paragraph 1 for both the delivered item and its assembly starts on the day that assembly is completed by the supplier. This period ends in any case 12 months after delivery of the item according to Article 6(2).
3. Defects in a delivered item shall be eliminated by the supplier by it repairing or replacing the defective part, at the supplier's premises or elsewhere, or by it sending a refurbished part or replacement part, all this at the supplier's discretion at all times. After the elimination of the defect, the supplier is equally obliged to eliminate defects in the refurbished or replacement part during a period of 6 months. Any liability for defects in the delivered item shall in any case expire 12 months after its delivery according to Article 6(2) or, where paragraph 2 applies, 18 months after that delivery.
4. Defects in the assembly of an item delivered by the supplier shall be eliminated by the supplier carrying out repairs. After the elimination of the defect, the supplier shall be equally liable for defects in the repairs during a period of 6 months. Any liability for defects in the repairs shall expire in any case 18 months after delivery of the item under Article 6(2).
5. Defects in maintenance, repair (if not performed pursuant to Paragraph 3 or Paragraph 4), assembly of an item delivered to the buyer by a third party, overhaul, contracting work and similar activities, shall be eliminated by the supplier by redoing the work, insofar as it is defective. After redoing the work, the supplier shall be equally liable for any defects in the repairs during a period of 6 months. Any liability for defects in the repairs shall expire in any case 12 months after delivery under Article 6(2).
6. Defects due to infringement of intellectual property rights shall, at the supplier's discretion, be remedied by the supplier through:
 - acquisition of the right of use for the buyer;
 - such modification of the item that infringement no longer exists, or
 - replacement of the item with another item that does not infringe intellectual property rights.

- After said modification or replacement the supplier shall be liable for any defects therein during a period of 6 months under the conditions set out in this article. Any liability of the supplier for defects in the repairs shall in any case expire 12 months after delivery of the item under Article 6(2) or, where paragraph 2 applies, 18 months after that delivery.
7. Transport costs and additional costs of disassembly and reassembly incurred by the supplier in removing defects shall be borne by the buyer.
 8. The supplier shall not be liable for defects in inspections, advice or similar services.
 9. The supplier is not liable for defects, which occur in or are wholly or partially the result of:
 - a) failure to comply with operating and maintenance instructions or use other than the expected normal use;
 - b) normal wear and tear;
 - c) assembly or disassembly, repairs or modifications by the buyer or by third parties;
 - d) the application of a government regulation;
 - e) materials and items already used in consultation with the buyer;
 - f) materials and items provided by or on behalf of the buyer for processing or otherwise;
 - g) materials, items, design, construction or working methods applied on the express instructions of the buyer;
 - h) components, including software, procured by the supplier from third parties, insofar as the third party is not liable to the supplier for them.
 - i) The supplier is also not liable for infringement of intellectual property rights resulting from the circumstance that:
 - j) the product is used outside the Netherlands;
 - k) the product is used in a different way than agreed;
 - l) the product is used in combination with equipment or software not supplied by the supplier.
 10. If the buyer does not, does not properly or does not timely comply with an obligation arising for it from any agreement concluded with the supplier, the supplier is not obliged to eliminate defects. If the buyer proceeds to disassemble, repair or perform other work on the product or has it done without the prior written approval of the supplier, any obligation of the supplier to remove defects shall lapse.
 11. Defects must be reported to the supplier in writing as soon as possible after their discovery, but no later than 14 days after the expiry of the applicable liability period. If these deadlines are exceeded, any claim for those defects will lapse. Legal actions must be brought within 1 year of said notification under penalty of forfeiture of all rights.
 12. If the buyer has made the said notification and no defect is found for which the supplier is liable, the supplier is entitled to reimbursement of the costs incurred as a result of the notification.
 13. If the supplier replaces parts when removing defects, the replaced parts shall become the property of the supplier.
 14. If the buyer claims that the supplier does not fulfil an obligation mentioned in this article, the buyer shall remain obliged to fulfil the obligations arising for it from any agreement concluded with the supplier.
 15. If the supplier has not eliminated the defect within a reasonable period of time, the buyer may set a final, reasonable deadline for the supplier to do so by written notice. If the supplier fails to comply with its obligations within the latter period, the buyer may, at the supplier's expense, have the defect removed itself or by a third party, provided that the buyer or the third party has the necessary expertise to do so. If the defect is thus successfully eliminated, the supplier shall be released from all liability for the defect by reimbursing the reasonable costs incurred by the buyer. These costs shall not exceed 15 per cent of the price of the product.
 16. If the defect is not eliminated according to paragraph 15,
 - a) the buyer is entitled to a discount on the price in proportion to the depreciation of the product. This discount shall not exceed 15 per cent of the price, or
 - b) if the defect is so serious that it significantly deprives the buyer of the interest in the contract for the product or an essential part of the product, respectively, the buyer shall be entitled to terminate the contract for the product or the essential part of the product, respectively, by giving written notice to the supplier. The buyer shall then be entitled to a refund of the price paid for the part for which the agreement is terminated. The buyer shall further be entitled to compensation of up to 15% of the part of the price relating to the part of the product for which the agreement is terminated.

Article XII Liability

1. Unless there is intent or deliberate recklessness on the part of the supplier's employees belonging to the company management and subject to the applicability of Art. 6(5) and Article 11, all liability of the supplier is excluded, regardless of the legal basis. The supplier is therefore not liable, among other things, for damage caused by:
 - non-delivery;
 - liability towards third parties;
 - any wrongful acts or omissions of (employees and auxiliary persons of) the supplier;
 - infringement of intellectual property rights, licences and other third-party rights;
 - damage or loss, from whatever cause, of raw materials, semi-finished products, models, tools and other items made available by the buyer;
 - loss or corruption of data;
 - loss of production and reduction of possibilities for use;
 - loss of contracts and customers.
 The supplier is further not liable for loss of profits and any consequential and indirect damage.
2. The buyer is obliged to indemnify and hold the supplier harmless from and against all claims by third parties for compensation of damage in connection with the performance of the agreement.

Article XIII Force majeure

1. In these general terms and conditions, force majeure means any circumstance beyond the control of the supplier - even if it was foreseeable at the time the agreement was concluded - which permanently or temporarily prevents the supplier from fulfilling the agreement or makes it unreasonably onerous, and, insofar as not already included, war, the threat of war, civil war, riots, strikes, lock-out of employees, transport problems, import and export restrictions, government measures, fire, terrorism, epidemics and pandemics, natural disasters, extreme weather conditions, limited availability of energy, power failures, internet failures, failures in computer networks and telecommunication facilities, cybercrime and delivery defects and delays by suppliers as a result of circumstances mentioned in this paragraph.
2. If the supplier is temporarily unable to fulfil the contract due to force majeure or only in a way that is unreasonably onerous for it, it has the right to suspend performance of the agreement. After 6 months, if the force majeure situation still persists, either party is entitled to terminate the agreement in whole or in part. Either party is further authorised to terminate the agreement in whole or in part if, after the force majeure situation has begun, it is or becomes clear that performance of the agreement by the supplier will be impossible or unreasonably onerous for more than 6 months.
3. In case of suspension and termination under paragraph 2, the supplier shall not be obliged to pay compensation. The supplier is then entitled to demand payment of the costs it has incurred for the raw materials, materials, parts and other items purchased, reserved, processed and manufactured by it for the performance of the agreement. In case of termination under paragraph 2, the buyer is obliged to take delivery of said goods after payment of said costs. If the buyer fails to do so, the supplier is authorised to store these items at the buyer's expense and risk or to sell or destroy them at the buyer's expense.

Article XIV Suspension and termination

1. If there is good reason to fear that the buyer is or will be unable or unwilling to fulfil its obligations and in case of bankruptcy, suspension of payments, shutdown, liquidation or full or partial transfer of the buyer's business, the supplier has the right to require appropriate security for all contractual obligations (whether due and payable or not) of the buyer and, in anticipation thereof, to suspend performance of the agreement. Failure to provide such security within a reasonable period set by the supplier shall entitle the supplier to terminate the agreement in whole or in part. The supplier has these powers in addition to its other rights under the law, the agreement and these terms and conditions.
2. If the buyer does not, does not timely or does not properly fulfil an obligation under an agreement with the supplier, the supplier is entitled to suspend the performance of the agreement and/or to terminate the agreement.
3. In case of suspension and termination according to paragraphs 1 and 2, the supplier has the right to store the raw materials, materials, parts and other items purchased, reserved, processed and manufactured by it for the performance of the agreement at the buyer's expense and risk. The supplier may also choose to sell or destroy these at the buyer's expense. In case of suspension and termination according to paragraphs 1 and 2, the supplier is entitled to full compensation, but is not obliged to pay compensation itself.
4. If the buyer terminates the agreement without the supplier's prior written approval, it is obliged to pay the full price without being given notice of default, minus the costs saved by the supplier.

Article XV Disputes

All disputes based on the agreement and further agreements resulting from it shall be settled by the competent Dutch court in the supplier's district, unless otherwise provided for by mandatory law.

Article XVI Applicable law

All agreements to which these conditions apply are governed by the law applicable in the Netherlands, to the exclusion of rules of referral and rules of conflict of private international law. The applicability of the Vienna Sales Convention (CISG) is excluded.

Additional general terms and conditions of the Vandoren for the development of custom software

Article XVII Definitions

1. The following definitions apply in these general terms and conditions:
 - Custom software: software not included in the delivered item that has been or is being developed in whole or in part on the basis of specifications agreed in writing;
 - Documentation: functional and technical specifications, user and technical manuals and other documentation provided together with custom software.

Article XVIII Right of use of custom software

1. In derogation from Article 5.1, third sentence, the buyer acquires a non-exclusive, non-transferable, non-pledgeable and non-sublicensable right to use the custom software in and for the benefit of the buyer's own company or organisation.
2. If the custom software is developed for specific equipment, it will be used by the buyer exclusively for that equipment. In the event of any failure thereof, the buyer shall be entitled to use the custom software on other equipment of the buyer with the same qualifications for the duration of the failure.
3. The customer is allowed to make a maximum of two copies of the custom software for backup purposes.
4. The supplier is permitted to technically prevent the making of copies by the buyer.
5. The buyer shall not be allowed to sell, rent out, dispose of, transfer by way of security or otherwise make the custom software or a copy of the custom software available or available for inspection or use to third parties, or to use it for the benefit of third parties. The buyer shall not modify the custom software.
6. Any third-party rights relating to (parts of) the custom software and the resulting restrictions on the present right of use shall be observed proportionally between the parties.
7. The right of use referred to in paragraph 1 shall in no way restrict the supplier in the use and delivery of products or custom software to third parties. The buyer shall not remove indications of intellectual property and affix the same indications to any copies.
8. To protect the rights of the supplier and any third parties, the buyer shall ensure that custom software and the associated documentation are kept confidential.

Article XIX Definitions

1. In addition to Article 8(1), if an acceptance test has been agreed, it will be checked whether the delivered custom software meets the functional or technical specifications expressly agreed in writing.
2. If data is used in the testing commissioned by the buyer, the buyer shall ensure that the use of this data is permitted for this purpose.

Article XX Defects in custom software

1. In derogation from 11(1), the following shall apply in case of defects in custom software:

The delivered custom software must comply with the functional or technical specifications expressly agreed in writing. If these specifications are substantially not met, this constitutes a defect. Moreover, a defect only exists if it is reproducible. The supplier will make every effort to eliminate the defect in accordance with Article 11. Unless agreed otherwise, any infringement of intellectual property rights of a third party applicable in the Netherlands is also considered a defect.

The obligation to eliminate a defect only applies to defects in the custom software that are not observable during inspection and (if agreed) acceptance tests, of which the buyer proves that they occurred within 3 months after delivery according to Article 6(2).
2. The buyer acknowledges that, in the current state of the art, it is not possible to manufacture custom software in such a way that it works flawlessly in all applications and combinations. The supplier does not warrant that the custom software will function without limitations, interruptions, defects or failures at all times. The supplier does not vouch for the flawlessness of the custom software.
3. The second and third sentences of Article 11(3): 'After eliminating the defect 18 months after that delivery' do not apply. Instead, the text reads in the case of custom software: Repair includes applying temporary solutions or programme workarounds or problem-avoiding restrictions in the custom software.
4. Article 11(6) reads as follows in the case of custom software: Defects due to infringement of intellectual property rights shall, at the supplier's discretion, be remedied by the supplier through:
 - acquisition a right of use for the buyer;
 - such modification of the custom software that infringement no longer exists, or
 - replacement of the custom software with other custom software or other software not included in a delivered item that does not infringe intellectual property rights.

For 3 months after the said modification or replacement, the supplier shall be liable in accordance with the provisions of the conditions set out in Article 11, as amended in these additional conditions, for any defects therein.
5. The buyer shall immediately notify the supplier in writing of any alleged infringement of intellectual property rights and shall leave the handling of the case exclusively to the supplier and cooperate fully in this regard.
6. Article 11(2), (4) and (5) do not apply.

Article XXI Buyer's responsibility

1. The buyer shall take the appropriate technological and organisational security measures against computer viruses and other malicious and/or harmful software in accordance with the security rules generally applicable in business, as well as against unauthorised use, unauthorised modification, access or distribution of (parts of) the custom software.
2. Backups are the responsibility of the buyer.

Article XXII Limitation of Supplier Liability

1. If and insofar as the supplier performs work for the purpose of changing, updating or replacing software of the customer, regardless of the nature and scope of the consequences of an error in the performance of the work and without prejudice to the provisions of article XI, the liability of the supplier, is limited to the amount of the costs for the work for installing, changing, updating or replacing software and/or limited to the amount of the contract price of the underlying agreement of the parties.
2. The Contractor is not liable for any indirect or consequential damage as a result of a violation of a responsibility of the Client pursuant to Article XXI.
3. By error, the parties understand, among other things, an incorrect implementation of an update or a defect in the software to be installed, including a software virus, and/or any unlawful infringement by third parties of the hardware and software of the Client (for example, hacking).
4. Insofar as these additional terms and conditions do not deviate from the general terms and conditions of sale and delivery for the technology industry, issued by the FME Association, filed on 13 May 2022 under number 13/2022, the said terms and conditions are fully applicable to custom software.