

## 1. Definitions

In these terms and conditions, the terms below have the following meaning:

- 1.1 Agreement:** is the agreement between Supplier and Customer for the sale and delivery of Products, which shall only be formed upon Supplier's Confirmation.
- 1.2 Customer:** designates the entity that enters into an agreement with the Supplier for the sale and delivery of a Product.
- 1.3 Force Majeure:** an act or event beyond the reasonable control of a Party, its agents or contractors, affecting the performance by such Party of its obligations under the Agreement, including without limitation disaster, fire, flood, earthquake, elements of nature, acts of God, actual or threatened terrorist attacks, acts of war, sabotage, explosion, riots, civil disorders, rebellions, revolutions and strikes, lockouts or labour disputes, government acts, accident or breakdown of plant or machinery, shortage of materials, failure by a utility provider (including electricity, gas, network or telecom provider) to provide services and any actions or omissions of third parties beyond their reasonable control.
- 1.4 Intellectual Property:** (i) copyrights, rights in software, patents, database rights and rights in trademarks, trade names, inventions, domain names and designs, (in each case whether registered or unregistered); (ii) applications for registration, and the right to apply for registration, for any of these rights; and (iii) all other intellectual property and equivalent or similar forms of protection existing anywhere in the world.
- 1.5 Laws and Standards:** shall have the meaning as set forth under clause 14.
- 1.6 Party/Parties:** Customer and/or Supplier, as applicable.
- 1.7 Product:** designates the items that are offered for sale by the Supplier.
- 1.8 Specifications:** shall have the meaning as set forth under clause 8.3.
- 1.9 Supplier:** Recreational Systems International, a company incorporated and existing under the laws of the Netherlands, with its registered office at Zeelbergseweg 35, NL- 5555 LD Valkenswaard, company number NL859401583B01.
- 1.10 Supplier's Confirmation:** shall have the meaning as set forth under clause 3.1.
- 1.11 Taxes:** shall have the meaning as set forth under clause 4.2.
- 1.12 Terms:** these general terms and conditions of sale, delivery and payment.
- 1.13 Use:** shall have the meaning as set forth under clause 8.1.
- 1.14 Works:** shall have the meaning as set forth under clause 10.1.

## 2 General

- 2.1** All Agreements, Supplier's quotations to Customer, or Customer's orders for Products, are subject to these Terms.
- 2.2** The applicability of general terms and conditions employed by Customer is hereby explicitly rejected, and Parties agree that any future reference thereto will be without effect. These Terms supersede any and all prior oral and written quotations, communications, agreements and understandings of the Parties in respect of the sale, delivery and installation of the Products and shall apply in preference to and supersede any and all terms and conditions of any order placed by Customer and any other terms and conditions submitted by Customer. Failure of Supplier to object to terms and conditions set by Customer shall in no event be construed as an acceptance of any terms and conditions of Customer. Neither Supplier's commencement of performance nor Supplier's delivery shall be deemed or constituted as acceptance of any of Customer's terms and conditions. If these Terms differ from any terms and conditions of Customer, these Terms and any subsequent communication or conduct by or on behalf of Supplier, including, without limitation, confirmation of an order and delivery of Products, constitutes a counter-offer and not acceptance of such terms and conditions submitted by Customer. Any communication or conduct of Customer which confirms an Agreement, as well as acceptance by Customer of any delivery of Products from Supplier shall constitute an unqualified acceptance by Customer of these Terms.

2.3 These Terms may only be varied or waived by a duly executed written agreement between Supplier and Customer under express reference to this clause.

2.4 The Agreement that consists of these Terms together with the order of Customer that is accepted by Supplier shall constitute the complete Agreement between Supplier and Customer. The Agreement can only be amended by means of a deed that is executed by authorised representatives of both Parties.

2.5 If any provision or part of a provision of these Terms shall be found by any court of competent jurisdiction to be invalid or unenforceable, then such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of these Terms, all of which shall remain in full force and effect. The pertaining provisions held to be invalid or unenforceable shall be reformed to provisions satisfying the legal and economic intent of the original provisions to the maximum extent permitted by law.

2.6 Failure by Supplier to enforce at any time any provision of these Terms shall not be construed as a waiver of Supplier's right to act or to enforce any such term or condition and Supplier's rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by Supplier of any breach of Customer's obligations shall constitute a waiver of any other prior or subsequent breach.

### 3 Quotations, orders and confirmation

3.1 Quotations, made by Supplier in whatever form, are neither binding nor irrevocable and merely constitute an invitation to Customer to place an order. All quotations issued by Supplier are revocable and subject to change without notice. Orders are not binding until accepted by Supplier in writing ("Supplier's Confirmation"). Supplier shall be entitled to refuse an order without indication of its reasons.

3.2 Price quotations based on estimated or projected quantities are subject to increase in the event that actual quantities purchased during the specified period are less than the estimated or projected quantities.

3.3 Statements and agreements made by Supplier's employees, officers, representatives and/or agents are not binding upon Supplier unless, and only to the extent that, these are confirmed or made in writing by duly authorized representative(s) of Supplier.

3.4 Except as provided in in clause 8.3, any samples supplied to Customer are supplied solely for information purposes and in no way imply any express or implied conditions or warranties of any kind, including as to quality, description, merchantability, suitability or fitness for any purpose and Customer shall be deemed to have satisfied itself as to such matters prior to ordering the Products.

3.5 Each delivery shall stand as a separate transaction and failure to deliver, shall have no consequences for other deliveries.

### 4 Prices

4.1 Prices and currencies of Supplier's Products are as set out in Supplier's Confirmation.

4.2 Unless expressly otherwise agreed, Supplier's prices include standard packaging but do not include Value Added Tax or any other similar applicable taxes, duties, levies or charges in any jurisdiction levied in relation to the Products or the delivery or installation thereof ("Taxes"). The amount of any Taxes levied in connection with the sale, delivery or installation of the Products to Customer shall be for Customer's account and shall be added to each invoice or separately invoiced by Supplier to Customer. If Supplier grants a discount, this discount only relates to the delivery specifically mentioned in Supplier's Confirmation.

4.3 Unless the prices have been indicated as firm by Supplier in Supplier's Confirmation, Supplier is entitled to increase the price of the Products still to be delivered if the cost price determining factors have been subject to an increase. These factors include but are not limited to: raw and auxiliary materials, energy, products obtained by Supplier from third parties, wages, salaries, social security contributions, governmental charges, freight costs and insurance premiums. Supplier shall notify Customer of such increase.

## 5 Payment

- 5.1 Unless expressly otherwise agreed, the invoice will be issued after Supplier's Confirmation.
- 5.2 All payments shall be made by Customer by means of transfer into the bank account mentioned on the invoice, in full, without deductions or set-off, and will be made in the currency stated in the invoice.
- 5.3 The invoices will be paid by Customer .....of the invoice date. In case the payment term is exceeded, a default interest of 1% per month as from the due date is applicable.
- 5.4 All costs and expenses incurred by Supplier with respect to collection of overdue payments (including, without limitation, reasonable attorney's fees, expert fees, court costs and other expenses of litigation) shall be for Customer's account. Every payment by Customer shall in the first place serve to pay the judicial and extra-judicial costs and the interest owed by it and afterwards shall be deducted from the oldest outstanding claim regardless of contrary advice from Customer.
- 5.5 Any complaint with respect to the invoice must be notified to Supplier within [8] days after the date of invoice. Thereafter Customer shall be deemed to have approved the invoice.

## 6 Delivery and acceptance

- 6.1 Unless expressly otherwise agreed, the Products will be offered ex works. Customer shall accept the Products upon delivery.
- 6.2 The delivery dates as stipulated in the Agreement are never fatal. Supplier shall make all reasonable efforts to meet the estimated date of delivery. If any delivery date is exceeded, then Supplier will only become in default if Supplier has received a written notice of default from Customer in which Supplier is provided an additional and reasonable term of at least [4] weeks to deliver the Products and Supplier does not deliver the Products within the time specified.
- 6.3 Unless expressly otherwise agreed, Supplier reserves the right to make partial deliveries to the extent reasonable for the Customer. All partial deliveries, insofar as they have been invoiced separately, shall be paid on the due date, irrespective of the following delivery.

## 7 Cancellation

- 7.1 Customer's wrongful non-acceptance or rejection of Products or cancellation or repudiation of Supplier's Confirmation shall entitle Supplier to recover from Customer, in addition to any other damages caused by such action:
- (i) in the case of Products which reasonably cannot be resold by Supplier to a third party, the price of such Products; or
- (ii) in the case of Products which can be resold by Supplier or where an action for the price is not otherwise permitted by law, damages equal to 50% of the price for the Products as liquidated damages.

## 8 Examination and conformity to specifications

- 8.1 On delivery and during the handling, use, processing, transportation, storage and sale of the Products (the "Use"), Customer shall examine the Products and satisfy itself that the Products delivered meet all contractual requirements.
- 8.2 Complaints about the Products shall be made in writing and must reach Supplier not later than [7] days from the date of delivery in respect of any defect, default or shortage which would be apparent from a reasonable inspection on delivery, and [7] days from the date on which any other claim was or ought to have been apparent, but in no event later than [6] months from the date of delivery of the Products for defects, defaults or shortages of any kind, including but not limited to hidden defects. Use or processing of the Products shall be deemed to be an unconditional acceptance of the Products and a waiver of all claims in respect of the Products.

**8.3** A determination of whether or not delivered Products conform to the agreed specifications for the Products as stated in Supplier's Confirmation or, in the absence of agreed specifications, to the most recent specifications held by Supplier at the time of delivery of the Products (the "Specifications"), shall be done solely by analysing the samples or records retained by Supplier and taken from the batches or production runs in which the Products were produced in accordance with the methods of analysis used by Supplier. Products that Supplier consents or directs in writing to be returned shall be returned to Supplier at the risk of Customer, to the destination directed by Supplier.

**8.4** Defects in parts of the Products stated in Supplier's Confirmation do not entitle Customer to reject the entire delivery of the Products. Complaints, if any, do not affect Customer's obligation to pay. Upon receipt of a notice of defect, Supplier is entitled to suspend all further deliveries until the complaints are established to be unfounded and/or refuted or until the defect has been totally cured.

## **9 Transfer of risk and property**

**9.1** The risk of the Products shall pass to Customer at loading point supplier.

**9.2** Products for which delivery is suspended pending payment by Customer, as well as Products of which delivery is wrongfully rejected or not accepted by Customer, shall be held and stored by Supplier at the risk and expense of Customer.

**9.3** The ownership of the Products shall not pass to Customer and full legal and beneficial ownership of the Products shall remain with Supplier unless and until Supplier has received payment in full for the Products, including all secondary costs such as interest, charges, expenses etcetera.

**9.4** In the event of termination on the basis of clause 17 of these Terms, Supplier shall, without prejudice to any other rights of Supplier, be entitled to require immediate re-delivery of the Products for which it may invoke a retention of title.

**9.5** Until payment for the Products has been completed, Customer is entitled to use the Products solely to the extent required in its ordinary course of business, and, to the extent possible, shall:

- (i) keep the Products separate and in a clearly identifiable manner;
- (ii) notify Supplier immediately of any claims by third parties which may affect the Products; and
- (iii) adequately insure the Products.

## **10 Installation works**

**10.1** The current clause 10 shall apply in addition to the other clauses of these Terms whenever the Parties decide to include in the Agreement the installation of the Products (the "Works").

**10.2** Unless expressly otherwise agreed, the Works shall be charged using an hourly rate, as set out in Supplier's Confirmation. Travel and waiting times shall be deemed to constitute working time.

**10.3** In case a lump-sum price is agreed upon, such price shall cover the Works as listed on the Supplier's Confirmation.

**10.4** The installers and representatives are not entitled to receive any payments.

**10.5** Before the commencement of the Works, each Party must inform the other Party in writing of the person in charge of the Works and the follow-up thereof. Whilst the Works are being carried out, the persons designated by the Parties to be in charge of the Works must be present at (or nearby) the installation site.

**10.6** It is the sole Customer's responsibility to obtain any permit, authorisation, clearance, declaration of starting activities or similar, where necessary, in order to effect installation, in accordance with the Laws and Standards in force and requirements provided for in the country in which the Works will be carried out.

**10.7** The date of completion of the Works as indicated in Supplier's Confirmation shall be of a merely indicative nature and shall not be binding upon the Supplier.

**10.8** Should the duration of the Works exceed the date of completion of the Works as indicated in Supplier's Confirmation for whatsoever reason which is not attributable to the Supplier, the latter is entitled to invoice separately, and in addition to the agreed lump-sum price, its own personnel's waiting time, additional activities performed, travelling allowances and its personnel's other travel expenses. Should the Works be interrupted due to any permit, authorisation, clearance, start of works declaration or the like, for any reason whatsoever, the Supplier shall be entitled to compensation for all the Products which have already been delivered and any Works which have already been carried out.

**10.9** Even if the Parties have expressly agreed that the date of completion of the Works as indicated in Supplier's Confirmation is binding, the Supplier cannot be held responsible or liable for delays to delivery caused by Force Majeure or by adverse weather conditions, including but not limited to rain, snow, hail and strong winds. The Supplier shall assess at its discretion, on a case by case basis, the impact that such factors may have on the adherence to the delivery terms. In any case, the Supplier shall inform the Customer in writing with regard to the estimated length of the delay. Delays to installation caused by adverse weather conditions do not give rise to any right on behalf of the Customer to suspend payment or terminate the Agreement.

## **11 Limited warranty**

**11.1** Except for wilful conduct or fraud, for any mandatory stipulation under applicable laws and for the specific product warranty as set out in the Supplier's Confirmation, Supplier solely warrants that on the date of delivery the Products shall conform to the Specifications. If and to the extent Products fail to meet such warranty, as shall be determined in accordance with the provisions of clause 8 of these Terms, Supplier may at its own option within a reasonable time either repair or replace the Products at no charge to Customer, or issue a credit for any such Products in the amount of the original invoice price. Accordingly, SUPPLIER'S OBLIGATION SHALL BE LIMITED SOLELY TO REPAIR OR REPLACEMENT OF THE PRODUCTS OR FOR CREDIT OF THE PRODUCTS.

**11.2** Supplier's obligation to repair, replace, or credit shall be contingent upon receipt by Supplier of timely notice of any alleged non-conformance of Products and, if applicable, the return of the Products, in accordance with clause 8 of these Terms. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, TERMS, EXPRESS, IMPLIED, STATUTORY, CONTRACTUALLY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR ANY PURPOSE, OR ABSENCE OF INFRINGEMENT OF ANY CLAIM IN ANY INTELLECTUAL PROPERTY RIGHT COVERING THE PRODUCTS.

## **12 Limitation of liability**

**12.1** THE LIABILITY OF SUPPLIER FOR ANY AND ALL CLAIMS FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS AND THE USE THEREOF SHALL UNDER NO CIRCUMSTANCES EXCEED THE SUM OF CUSTOMER'S PAYMENTS FOR THE PRODUCTS THAT ARE THE SUBJECT OF THE CLAIM. UNDER NO CIRCUMSTANCES SHALL SUPPLIER BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY KIND OF SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGE OR LOSS, COST OR EXPENSE, INCLUDING WITHOUT LIMITATION, DAMAGE BASED UPON LOST GOODWILL, LOST SALES OR PROFITS, WORK STOPPAGE, PRODUCTION FAILURE, IMPAIRMENT OF OTHER PRODUCTS OR OTHERWISE, AND WHETHER ARISING OUT OF OR IN CONNECTION WITH BREACH OF WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE OR OTHERWISE.

## **13 Modifications and information, indemnity**

**13.1** Unless the Specifications have been agreed to be firm for a certain period or quantity of Products, Supplier reserves the right to change or modify the Specifications, construction and/or manufacture of Products and to substitute materials used in the production and/or manufacture of Products from time to time without notice. Customer acknowledges that data in Supplier's catalogues, specification sheets and other descriptive publications distributed or published on its websites by Supplier, may accordingly be varied from time to time without notice. Any statement, representation, recommendation, advice, sample or other information of Supplier in relation to the Specifications, the Products and the Use thereof shall be furnished for the accommodation of Customer only.

**13.2** Customer must utilise and solely rely on its own expertise, know-how and judgement in relation to the Products and Customer's Use thereof and in Customer's application of any information obtained from the part of Supplier for the purposes intended by Customer. Consultation provided by Supplier shall not give rise to any additional obligations. Details and information provided with regard to the suitability and Use of the Products shall not be binding and Supplier does not assume any liability based on such consultations. Customer shall indemnify and hold Supplier harmless from and against any and all damage, losses, costs, expenses, claims, demands and liabilities arising out of or in connection with the Products, Customer's Use thereof and/or Customer's use or application of any information disclosed or provided by or on behalf of Supplier.

#### **14 Compliance with laws and standards**

**14.1** Supplier makes no promise or representation that the Products shall conform to any law, statute ordinance, regulation, code or standard ("Laws and Standards"), unless expressly stated in Supplier's Confirmation or in the Specifications. Customer acknowledges that the Use of the Products may be subject to requirements or limitations under Laws and Standards. Customer shall be exclusively responsible for (i) ensuring compliance with all Laws and Standards associated with its intended Use of the Products; and (ii) obtaining all necessary approvals, permits or clearances for such Use.

#### **15 Independent contractors**

**15.1** Supplier and Customer are independent contractors, and the relationship created hereby shall not be deemed to be that of principal or agent. No sale to or obligation of either party towards a third party shall in any way bind the other party.

#### **16 Assignment**

**16.1** To the maximum extent allowed by applicable laws, Supplier has the right to subcontract any of its rights or obligations under an Agreement.

**16.2** Customer is not allowed to assign any of the rights or obligations under an Agreement without the prior written consent of Supplier

#### **17 Suspension and termination**

**17.1** If (a) Customer is in default of performance of its obligations towards Supplier, or (b) if Supplier has reasonable doubts with respect to Customer's performance of its obligations to Supplier and Customer fails to provide to Supplier adequate assurance of Customer's performance before the date of scheduled delivery and in any case within [30] days of Supplier's demand for such assurance; or if Customer becomes insolvent or unable to pay its debts as they mature, or goes into liquidation (otherwise than for the purposes of a reconstruction or amalgamation) or any bankruptcy proceeding shall be instituted by or against Customer or if a trustee or receiver or administrator is appointed for all or a substantial part of the assets of Customer or if Customer enters into a deed of arrangement or makes any assignment for the benefit of its creditors, then, without prejudice to any other rights of Supplier, Supplier may by notice in writing forthwith

(i) demand re-delivery and take repossession of any delivered Products which have not been paid for, for which purpose Customer hereby grants an irrevocable right and licence to Supplier to enter upon all or any of the premises where the Products are or may be located and all costs relating to the recovery of the Products shall be for the account of Customer; and/or  
(ii) suspend its performance or terminate Supplier's Confirmation for outstanding delivery of Products unless Customer makes such payment for Products on a cash in advance basis or provides adequate assurance of such payment for Products to Supplier; without any intervention of courts being required and without liability for Supplier of whatsoever kind arising out of or in connection with such suspension or termination.

**17.2** In any such event of (i) and/or (ii), all outstanding claims of Supplier shall become due and payable immediately with respect to the Products delivered to Customer and not re-possessed by Supplier.

## 18 Intellectual Property

**18.1** Supplier has not verified the possible existence of third party Intellectual Property rights which might be infringed as a consequence of the sale, delivery and/or installation of the Products and Supplier shall not be held liable for any loss or damages in that respect.

**18.2** The sale of Products shall not, by implication or otherwise, convey any license under any Intellectual Property right relating to the compositions and/or applications of the Products, and Customer expressly assumes all risks of any Intellectual Property infringement by reason of its purchase and/or use of the Products, whether singly or in combination with other materials or in any processing operation.

## 19 Applicable law and Jurisdiction

**19.1** The terms and the Agreement shall be governed by and construed in accordance with the laws of the Netherlands, without regard to its conflict of law provisions. Parties specifically disclaim application of the United Nations Convention on Contracts for the International Sale of Products 1980 (CISG).

Any and all disputes, controversies or differences arising out of or in connection with the Agreement, tort, or otherwise shall be exclusively settled by the