



**1 Applicability and general provisions**

- 1.1 Unless expressly agreed otherwise in writing, these general terms and conditions of supply and payment ('General Terms and Conditions') apply to all legal relationships, including future legal relationships between Mr R.F.C. de Wit acting under the name of Frecoma (hereinafter referred to as: 'Frecoma') and the Other Party.
- 1.2 In the context of these General Terms and Conditions the Other Party means: a natural person or legal entity, whether or not in the exercise of his/her/its profession or business, who/which has entered into an agreement in writing with Frecoma with regard to the provision of services and/or the purchase of items and/or the acquiring of a right of use and/or any other agreement from which obligations ensue for Frecoma.
- 1.3 It makes no difference for the application of these General Terms and Conditions whether the terms defined above are set out in the singular or the plural, or as the case may be are used in a specific composition.
- 1.4 If one or more provisions of these General Terms and Conditions were at any time to be wholly or in part null and void or voided the remaining provisions of these General Terms and Conditions would continue to be fully applicable. In that event Frecoma and the Other Party will enter into consultation in order to agree to new provisions for the replacement of the null and void or voided provisions, in the course of which the objective and effect of the original provisions will be taken into consideration as much as possible.
- 1.5 If Frecoma does not always require strict compliance with these conditions, this will not mean that the provisions thereof are not applicable, or that Frecoma to any extent would lose the right in other eventualities to require strict compliance with the provisions of these conditions.
- 1.6 All offers and tenders issued by Frecoma are without obligation and have a period of validity of 14 days. An offer or tender will lapse if the product or service, which the offer or the tender relates to, has become unavailable in the interim.
- 1.7 Frecoma also cannot be bound by the Other Party to its offers and tenders if the Other Party could reasonably be expected to understand that the offers or tenders, or as the case may be a part thereof, contain an apparent mistake or clerical error.
- 1.8 The prices set out in an offer or tender are excluding VAT and any costs to be incurred in the context of the agreement, including processing, transport, toll, travel and accommodation, parking, dispatch and administrative costs, unless agreed otherwise.
- 1.9 If the acceptance by the Other Party (whether or not on minor points) derogates from the proposal included in Frecoma's offer or tender, Frecoma will not be bound thereto, which is in derogation from Section 225 subsection 2 Book 6 of the Civil Code. In that case the agreement will not come into effect in accordance with this derogating acceptance, unless Frecoma states that it wants this to take place.
- 1.10 A composite quotation will not oblige Frecoma to execution of a part of the assignment against a corresponding part of the price stated. Tenders or offers will not automatically apply to future orders.
- 1.11 Frecoma will be entitled to unilaterally amend the General Terms and Conditions. The General Terms and Conditions amended by Frecoma will apply towards the Other Party from thirty days after the Other Party was informed of the amendment in writing or by electronic means, unless the Other Party has informed Frecoma in writing of its objection to the amendment within the period set out. If the Other Party objects in a timely manner to the amendment, the unaltered General Terms and Conditions between parties will remain in effect until the completion of the assignment or the termination of the agreement, but not for longer than six months from the end of the aforesaid period of thirty days. If the agreement continues thereafter, the amended General Terms and Conditions will apply to it from that time.
- 1.12 The applicability of the general terms and conditions of third parties is expressly rejected. Frecoma rejects the general terms and conditions of third parties.

**2 Duration of contract, delivery periods, performance and amendment of the agreement**

- 2.1 The effect of these terms and conditions will apply for an indefinite period, unless it ensues otherwise from the nature of the agreement, or if parties expressly agree otherwise in writing. The terms and conditions also apply to future transactions and/or future legal relationships between Frecoma and the Other Party.
- 2.2 If a period has been agreed or stated for the completion of specific work or for the delivery of specific goods this will never be a final deadline. In the event of exceeding a period the Other Party must therefore provide Frecoma with notice of default in writing. Frecoma must thereby be offered a reasonable period of at least 4 weeks in order to still provide performance of the agreement.
- 2.3 If Frecoma requires data and/or materials from the Other Party for the performance of the agreement, the performance time will not commence until after the Other Party has made these correctly and completely available to Frecoma.
- 2.4 Frecoma will not be liable for inaccuracies in the information provided by the Other Party, including, but not limited to, dimensions, colour, structure, characteristics, nature and/or extent of the goods, on the basis of which the agreement has come into effect.
- 2.5 Frecoma has the right to have the work assigned to it executed by third parties.
- 2.6 Frecoma will be entitled to perform the agreement in different stages and to invoice separately for the part thus far performed.
- 2.7 If the agreement is executed in stages Frecoma can suspend the execution of those parts that form part of the following stage until the Other Party has approved in writing and/or paid for the results of the stage preceding thereto.
- 2.8 The Other party will be responsible for ensuring that the work and/or the deliveries to be executed by third parties, who do not form part of Frecoma's work, will be executed in time and in such a

- manner that the execution of the work will not be delayed due to this. If delay nevertheless occurs within the meaning of this subclause the Other Party must inform Frecoma of this no later than 24 hours prior to the commencement of the work to be executed by Frecoma. If the Other Party informs Frecoma of the delay less than 24 hours prior to the commencement of the work to be executed by Frecoma, Frecoma will be entitled to charge the Other Party for the waiting period, without prejudice to the right on the part of Frecoma to claim compensation of the actual damage suffered by it. The waiting periods will be calculated by multiplying the number of working hours reserved by Frecoma by an hourly rate of 100 Euro excluding VAT.
- 2.9 If it appears during the performance of the agreement that it is necessary for the proper performance thereof to amend this agreement, or to add to this agreement, parties will in a timely manner and in mutual consultation proceed with amendment of the agreement. If the nature, extent or contents of the agreement, whether or not on the request or instruction of the Other Party, of the competent authorities etcetera, is altered and the obligations ensuing from the agreement for Frecoma are qualitatively and/or quantitatively altered due to this, this may also have consequences for that which was originally agreed. The originally agreed price can be increased or reduced due to this. Frecoma will issue a quotation for this in advance if at all possible. Furthermore, an amendment of the agreement can entail a change of the originally stated execution period. The Other Party accepts the possibility of amendment of the agreement, including the change of price and period of execution.
  - 2.10 If the agreement is amended, including an addendum, Frecoma will be entitled to only execute this after agreement has been provided for this purpose by the person authorised by Frecoma, and the Other Party has agreed to the price stated for the execution and other terms and conditions, including the date – to be determined in that case – on which the execution will take place. The non-performance or delayed performance of the amended agreement will not constitute a breach of contract on the part of Frecoma and also will not constitute a ground for the Other Party to terminate the agreement. Without thereby becoming in default, Frecoma can refuse a request for amendment of the agreement if this, from a qualitative and/or quantitative point of view, could have consequences, for example for the work to be executed or the goods to be delivered in that context.
  - 2.11 If the Other Party were to become in default of the proper fulfilment of that for which it is obliged towards Frecoma, the Other Party will be liable for all damage (including costs) suffered on the part of Frecoma, which has consequently directly or indirectly arisen.
  - 2.12 If Frecoma has agreed on a fixed price with the Other Party, Frecoma nevertheless will be entitled at any time to increase this price without the Other Party in that case being entitled to terminate the agreement for this reason if the price increase ensues from an entitlement or obligation pursuant to the law or regulations, or is the result of an increase of the price of raw materials, wages etcetera, or on other grounds which were not reasonably foreseeable at the entering into of the agreement.
  - 2.13 If the price increase, other than as a result of an amendment of the agreement, amounts to more than 10% and takes place within three months from the concluding of the agreement, the Other Party which relies on Title 5 Part 3 of Book 6 of the Civil Code will be exclusively entitled to terminate the agreement by means of a written statement, unless in that case Frecoma is still prepared to perform the agreement on the basis of that which was originally agreed, or if the price increase ensues from an entitlement vested in, or an obligation imposed on, Frecoma pursuant to the law, or if it has been stipulated that the delivery will take place later than three months after the assignment.
  - 2.14 Frecoma will be entitled to charge the Other Party for the costs arisen due to the fact that the Other Party remained in default of making the execution or progress of the work possible.

**3 Suspension, termination and interim termination of the agreement**

- 3.1 Frecoma will be entitled to suspend the fulfilment of the obligations or to terminate the agreement without notice of default, if:
  - the Other Party does not, does not fully, or fails in a timely manner to, fulfil the obligations under the agreement;
  - after the concluding of the agreement Frecoma acquires knowledge of circumstances which give good grounds to fear that the Other Party will not fulfil the obligations;
  - the Other Party at the entering into of the agreement has been requested to provide security for the fulfilment of its obligations under the agreement and this security is not forthcoming or is insufficient;
  - if, through delay on the part of the Other Party, it can no longer be required of Frecoma to perform the agreement under the terms and conditions originally agreed, Frecoma will be entitled to terminate the agreement.
- 3.2 In the event that complaints are reported in a timely manner in accordance with these General Terms and Conditions the Other Party will not be entitled suspend the payment obligations towards Frecoma.
- 3.3 Furthermore Frecoma will be entitled, without prejudice to its statutory entitlements, to terminate the agreement if circumstances occur which are of such a nature that the performance of the agreement is impossible or if circumstances otherwise occur, which are of such a nature that the unaltered maintenance of the agreement cannot reasonably be required of Frecoma.
- 3.4 If the agreement is terminated, Frecoma's claims against the Other Party will be immediately due and payable. If Frecoma suspends the fulfilment of its obligations it will retain its claims ensuing from the law and the agreement.
- 3.5 If Frecoma proceeds with suspension or termination, it will in no way whatsoever be obliged to payment of damages and costs arisen due to this in whatsoever manner.
- 3.6 If the termination is attributable to the Other Party Frecoma will be entitled to compensation of the damage, including the costs, arisen directly and indirectly through this.
- 3.7 If the agreement is terminated in the interim by Frecoma, Frecoma will in consultation with the

- Other Party ensure the transfer to third parties of the work still to be executed. This is unless the termination is attributable to the Other Party.
- If the transfer of the work involves extra costs for Frecoma, these extra costs will be charged to the Other Party. The Other Party will be obliged to pay these costs within the period set out for this unless Frecoma states otherwise.
- 3.8 In the event of liquidation, of (application for) moratorium or insolvency, of attachment - if and insofar as the attachment is not lifted within three months - levied against the Other Party, of debt restructuring or another circumstance as a result of which the Other Party cannot freely dispose of its assets, Frecoma will be free to terminate the agreement forthwith and with immediate effect, or as the case may be to cancel the order or the agreement, without any obligation on its part of payment of any compensation or indemnification. The Frecoma's claims against the Other Party will be immediately due and payable in that case.
  - 3.9 Cancellation by the Other Party of an order or assignment that has been placed is not possible, unless Frecoma determines otherwise in writing. If the Other Party cancels wholly or in part an order that has been placed after approval from Frecoma the goods ordered, processed or prepared for this, plus any supply, removal and delivery costs thereof and the working hours reserved for the performance of the agreement will be charged in full to the Other Party.

**4 Packaging and dispatch**

- 4.1 If Frecoma, or a third party, has made pallets, boxes, crates, containers etc. available for the packaging and the transport - whether or not against payment of a returnable deposit or a security deposit, the Other Party will be obliged (unless this concerns one-off packaging, or as the case may be the Other Party has made other arrangements in writing with Frecoma) to return these packaging etc. to the address stated by Frecoma, in the absence of which the Other Party will owe compensation to Frecoma, unless the packaging can be reasonably regarded as rubbish, in which case the Other Party will be responsible for ensuring the further discharge and processing thereof at its own risk and expense.

**5 Force majeure**

- 5.1 Frecoma will not be obliged to the fulfilment of any obligation towards the Other Party if Frecoma is prevented from this as a result of a circumstance not attributable to its fault, nor if in accordance with the law, a legal act or according to generally accepted standards this is not to be considered as its account.
- 5.2 In these General Terms and Conditions, force majeure is meant to include all external causes, foreseen or unforeseen, beyond the control of Frecoma, but as a result of which Frecoma is unable to fulfil its obligations, in addition to that which is included in the law and case law. Industrial actions in Frecoma's company or third party companies, defective machine in Frecoma's company and (attributable) failures of Frecoma's haulier are included therein. Frecoma also has the right to rely on force majeure if the circumstance that hinders (further) performance of the agreement occurs after Frecoma should have fulfilled its obligation.
- 5.3 Frecoma can suspend the obligations under the agreement for the period during which the force majeure continues. If this period lasts longer than two months each of the parties will be entitled to terminate the agreement, without any obligation of compensation of damage to the other party.
- 5.4 Insofar as at the time of the occurrence of force majeure Frecoma has meanwhile partially fulfilled its obligations under the agreement, or will be able to fulfil these, and the fulfilled, or to be fulfilled part, has an independent value, Frecoma will be entitled to invoice separately for the part already fulfilled or to be fulfilled. The Other Party will be obliged to pay this invoice as if it were a separate agreement.

**6 Transfer of ownership and risk**

- 6.1 All goods delivered by Frecoma in the context of the agreement will remain the property of Frecoma until the Other Party has properly fulfilled all obligations under the agreement(s) concluded with Frecoma and under these General Terms and Conditions.
- 6.2 The Other Party will in this context not rely on accession, confusion of property, or ownership acquired by specification of goods belonging to Frecoma by or with an item belonging to the Other Party.
- 6.3 Goods delivered by Frecoma that, pursuant to article 6 subclause 1 are subject to retention of title, may not be sold on and may never be used as a means of payment. The goods are non-transferable within the meaning of Section 83 Book 3 of the Civil Code. The Other Party cannot and may not pledge the goods falling under the retention of title or encumber these goods in any other manner.
- 6.4 The Other Party must always do all that which can reasonably be expected of the Other Party to secure Frecoma's ownership rights.
- 6.5 If third parties levy attachment on the goods delivered subject to retention of title, or as the case may be wish to establish or enforce rights thereto, the Other Party will be obliged to immediately inform Frecoma of this.
- 6.6 The Other Party undertakes to insure the goods delivered subject to retention of title and to keep these insured against fire, explosion and water damage as well as theft, and the insurance policy must be made available on first request to Frecoma for perusal. In the event of any payment by the insurance company Frecoma will be entitled to this money. Insofar as necessary the Other Party undertakes towards Frecoma in advance by means of acceptance of these General Terms and Conditions to provide its cooperation to all that which may be necessary or may (appear to) be desirable in that context.
- 6.7 In the event that Frecoma wishes to exercise its ownership rights stated in this article, the Other Party hereby provides in advance unconditional and irrevocable permission to Frecoma and to third parties to be designated by Frecoma, to enter all those places where Frecoma's property is located



and to take these goods back.

6.8 If Frecoma has more than one claim against the Other Party and the Other Party pays one or more of these claims, as a result of which the ownership of the delivered goods transfers to the Other Party, while Frecoma still has a claim against the Other Party, parties hereby agree that a pledge without notice to the debtor will be established for the benefit of Frecoma on the property being in the possession of the Other Party in that case, due to the goods delivered by Frecoma. The pledge without notice to the debtor will only lapse after the Other Party has fulfilled all its obligations towards Frecoma. Frecoma will always be entitled to register (have registered) the agreement that it has concluded with the Other Party and the general terms and conditions applicable thereto with the tax authorities.

#### 7 Payment and collection costs

- 7.1 Payment must always take place by net transfer 30 days after the dispatch of Frecoma's invoice, unless stated otherwise in writing by Frecoma. Frecoma will be entitled, if it doubts the Other Party's creditworthiness, to always stipulate that the invoice will be paid prior to the delivery of the ordered goods and/or prior to the performance of the agreed work.
- 7.2 If the Other Party remains in default of payment in a timely manner the Other Party will be in default by operation of law. The Other Party will in that case owe interest of 1.5% per month, unless the statutory interest is higher, in which case the statutory (commercial) interest will be owed. The interest over the due and payable amount will be calculated from the time when the Other Party is in default until the time of payment in full of the due and payable amount.
- 7.3 Frecoma has the right to apply the payments made by the Other Party in the first place to settle the costs, thereupon to settle the interest arrears and lastly to settle the principal sum and the interest accrued. The Other Party agrees to this manner of allocation of payments.
- 7.4 Frecoma can, without thereby becoming in default, refuse an offer of payment if the Other Party designates a different order for the allocation of the payment of invoices. Frecoma can refuse payment in full of the principal sum, if the interest arrears and interest accrued as well as the collection charges are not also paid therewith.
- 7.5 The Other Party will never be entitled to set off the money owed by it to Frecoma.
- 7.6 Objections to an invoice amount will not suspend the payment obligation on the part of the Other Party. The Other Party to whom no reliance on Part 6.5.3 (Sections 231 up to and including 247 of Book 6 of the Civil Code) accrues will also not be entitled to suspend the payment of an invoice for another reason.
- 7.7 If the Other Party is in default, or in omission of fulfilment (in a timely manner) of its obligations, all reasonable costs incurred to acquire payment without the intervention of the courts will be at the expense of the Other Party. The extrajudicial costs will be calculated on the basis of that which is usual in Dutch debt collection services. However, if Frecoma has incurred higher costs for collection which were reasonably necessary, the actual costs incurred will be reimbursable. Any judicial and enforcement costs incurred will also be recovered from the Other Party. The Other Party will also owe interest over the collection charges owed.
- 7.8 Frecoma will always be entitled to request a deposit from the Other Party prior to proceeding with the delivery of any goods or services. Frecoma will be entitled to suspend the execution of all its work until the Other Party has paid the deposit.

#### 8 Guarantees, inspection and complaints, time limit

- 8.1 The goods to be delivered by Frecoma will fulfil the usual requirements and standards which can reasonably be set out for this at the time of the delivery and for which they are intended during normal use in the Netherlands. Frecoma does not guarantee that the Other Party can use the goods for any other, whether or not special, purpose or use envisaged by the Other Party, unless Frecoma has expressly confirmed in writing to the Other Party that the goods are suitable for that purpose or use.
- 8.2 The conformity designation in this article applies to all goods designated for use within the Netherlands, unless expressly agreed otherwise in writing. In the event of use outside the Netherlands the Other Party must verify whether the use thereof is suitable for use in that location and/or if the use complies with the statutory conditions and requirements set out for this. The Other Party will be obliged to inform Frecoma that the goods delivered or to be delivered by Frecoma will be used or sold on outside the Netherlands. In that event Frecoma can set out other (guarantee) conditions with regard to the goods to be delivered or work to be executed. Frecoma does not guarantee that the goods to be delivered by it will be suitable for use outside the Netherlands. Frecoma will always be entitled to cancel an order if the Other Party wishes to sell on goods delivered or to be delivered by Frecoma to a user outside the Netherlands, or to a person who does not act in the exercise of a profession and/or business.
- 8.3 There will be no non-conformity in any event if:
- The goods and/or materials sold by Frecoma and delivered by the Other Party for processing by Frecoma, which due to their characteristics and composition of the materials appear not to be suitable for the use envisaged by the Other Party, regardless of the question of whether the envisaged use was apparent to Frecoma. Frecoma will not advise the Other Party with regard to the suitability of goods and/or materials. The Other Party must personally research this suitability. Insofar as Frecoma has voluntarily provided advice or information to the Other Party, the Other Party cannot derive any rights therefrom.
  - The dimension and/or extent of the goods and/or materials sold by Frecoma and delivered by the Other Party for processing by Frecoma, whether or not after processing by Frecoma, is not suitable for the use envisaged by the Other Party, even though the dimension and/or extent of the goods and/or materials delivered by Frecoma corresponds with the agreement and/or has been approved by the Other Party;

- The goods and/or products sold by Frecoma, or delivered by the Other Party for processing by Frecoma, are used or processed after the best-before date has expired;
  - The affixing (having affixed) or processing (having processed) of the goods and/or materials in an improper manner.
  - The combined use of goods and/or materials purchased from Frecoma with goods of third parties, which have not been offered by Frecoma for the processing of the delivered goods and/or materials.
- 8.4 Every type of guarantee or other entitlement based on a failure in the performance of the agreement, or unlawful act, will lapse if a defect has arisen as a result of, or ensues from, improper or spurious use of an item delivered by Frecoma, or use after the best-before date, incorrect storage or maintenance thereof by the Other Party and/or third parties when, without permission in writing from Frecoma, the Other Party or third parties have made alterations or tried to make alterations, other goods were added thereto which should not have been attached thereto, or if these were processed or modified in a manner other than that which was prescribed by Frecoma.
- 8.5 The Other party will be obliged to inspect (have inspected) the delivered goods immediately at the time when the goods are made available to the Other Party, or if Frecoma must execute work, when Frecoma has executed the work concerned. The Other Party should thereby inspect whether the quality and/or quantity of the delivery corresponds with that which was agreed and whether it complies with the requirements parties have agreed to concerning this. Any visible defects must be noted by the Other Party on the delivery receipt. If there is no opportunity during the delivery to notice any damage of the delivered goods, the Other Party must state this in the delivery receipt. Any invisible defects must be reported immediately in writing to Frecoma, but in any event no later than within fourteen days after the discovery thereof, and at the latest one year after the delivery to the Other Party. The report must contain a description of the defect, which is as detailed as possible, in order for Frecoma to be able to respond adequately. The Other Party must provide Frecoma with the opportunity to inspect (have inspected) any complaint. If the Other Party submits a complaint in a timely manner, this will not suspend the payment obligation on the part of the Other Party. In that event the Other Party also remains obliged to purchase and payment of the other ordered goods. Complaints concerning shortages, incorrect layout, weights, and quantities, or concerning the packaging and the calculated price, can only be submitted in writing or by email within 5 days after the delivery of the goods.
- 8.6 If any defect is reported later than as determined in article 8.5, no right whatsoever will accrue to the Other party.
- 8.7 Any returning of the goods and/or materials purchased by the Other Party from Frecoma is excluded, unless it has been established that any delivered goods and services are defective and a complaint has been submitted in this respect in a timely manner and in conformity with these General Terms and Conditions and Frecoma:
- receives the returned defective item within a reasonable period after the complaint; or as the case may be
  - if returning is not reasonably possible, after a written report is produced by the Other Party with regard to the defect,
- Frecoma will ensure at its discretion:
- replacement or repair of the defective item; or as the case may be
  - make a replacement payment for the defective item to the Other Party.
- In the event of replacement the Other Party will be obliged to return the replaced item to Frecoma and to transfer the ownership thereof to Frecoma, unless Frecoma states otherwise. Frecoma will have fulfilled its obligation of replacement if Frecoma has provided a replacement item to the Other Party. If the goods or services consist of something other than the delivery of an item the Other Party must always provide Frecoma with the opportunity to still fulfil its obligations, unless this fulfilment has already been rendered permanently impossible.
- 8.8 If it has been established that a complaint is unfounded, the costs arisen due to this, including the inspection costs, incurred due to this on the part of Frecoma, will be fully at the expense of the Other Party.
- 8.9 In derogation from the applicable statutory periods, the expiry period of all (guarantee and conformity) entitlements, claims and defences of the Other Party towards Frecoma, and the third parties involved by Frecoma in the performance of an agreement, amounts to six months following notification in writing of a defect of other failure.
- #### 9 Liability
- 9.1 If Frecoma were to be liable, this liability will be limited in all events to that which is arranged in this provision.
- 9.2 Frecoma will not be liable for damage of whatsoever nature, arisen due to the fact that Frecoma has proceeded from incorrect and/or incomplete data provided by the Other Party, or as the case may be defects in materials or auxiliary materials made available by the Other Party.
- 9.3 If Frecoma were to be liable for any damage whatsoever, the liability on the part of Frecoma will be limited to once the invoice amount of the order and/or work, or to that part of the order and/or work to which the liability relates.
- 9.4 Frecoma's liability in any event will always be limited to the amount of the payment made by its insurer in any particular instance, plus the amount of the deductible which is not borne by the insurer under the policy conditions, which is payable by Frecoma.
- 9.5 Frecoma will be exclusively liable for direct damage.
- 9.6 Direct damage is exclusively taken to mean the reasonable costs to ascertain the cause and extent of the damage, insofar as the ascertaining relates to damage within the meaning of these terms and conditions, any reasonable costs incurred to have the defective performance on the part of Frecoma correspond with the agreement, insofar as this can be attributed to Frecoma, and reasonable

costs incurred for the prevention or limitation of damage, insofar as the Other Party demonstrates that these costs have resulted in limitation of direct damage as referred to in these general terms and conditions.

- 9.7 Frecoma will never be liable for indirect damage, including consequential loss, lost profit, lost savings and loss due to business interruption.
- 9.8 The limitations of liability included in this article will not apply if the damage is attributable to intention or gross negligence on the part of Frecoma or its employees.

#### 10 Risk transfer, delivery and the goods delivered by the Other Party

- 10.1 The risk of loss, damage or decrease in value of goods and/or materials of Frecoma will transfer to the Other Party at the time when the goods and/or materials are made available by Frecoma for purchase or transport, regardless of the question of whether the Other Party or Frecoma is responsible for ensuring the transport. Goods and/or materials will be deemed to have been made available for transport at a date agreed between parties, or at first delivery on a call-off basis from Frecoma.
- 10.2 Delivery will take place ex works of Frecoma, unless agreed otherwise. The Other Party will be obliged to take delivery of the goods at the time when these are made available to the Other Party.
- 10.3 If the Other Party refuses to or fails to provide the information or instructions that are necessary for the delivery, Frecoma will be entitled to store the goods at the expense and risk of the Other Party.
- 10.4 If the Other Party personally delivers goods and/or materials to Frecoma for processing, the risk of loss, damage, or decrease in value of these goods and/or materials will remain with the Other Party during the entire (work) process. During any storage by Frecoma prior to, during and after the processing Frecoma will also not be responsible or liable for damage to goods and/or materials that have been delivered by the Other Party or by third parties for processing by Frecoma. The limitation of liability under this article will not apply in the event of intention or gross negligence on the part of Frecoma.
- 10.5 The Other Party will be responsible for properly insuring his/her/its goods and/or materials stored by Frecoma.
- 10.6 Frecoma will not be obliged to inspect the goods and/or materials, which have been delivered by the Other Party to Frecoma, for processing for suitability for this purpose prior to the processing thereof. If required Frecoma will provide on request from the Other Party further information regarding and/or specifications of its machine(s), in order for the Other Party to be able to assess whether the materials delivered by the Other Party are suitable for processing in one of Frecoma's machines.

#### 11 Indemnity

- 11.1 The Other Party indemnifies Frecoma against possible claims by third parties, who in connection with the performance of the agreement suffer damage, insofar as the arising of this damage cannot be attributed to Frecoma.
- 11.2 If a claim is made for that reason by third parties against Frecoma, the Other Party will be obliged to assist Frecoma at law and otherwise and to promptly do all that which can be expected of the Other Party in that event, including the provision of all required information and cooperation to fend off the claim instituted or to be instituted by third parties. If the Other Party were to remain in default of taking adequate measures, Frecoma will be entitled to proceed thereto itself, at its discretion and without notice of default. All costs and damage on the part of Frecoma and third parties arisen through this will be fully at the expense and risk of the Other Party.
- 11.3 If a claim is made by a third party against the Other Party, which third party argues that it is suffering or might suffer damage resulting from goods delivered by Frecoma to the Other Party, then the Other Party will promptly inform Frecoma of this.

#### 12 Intellectual property

- 12.1 Frecoma retains the rights and entitlements which are vested in Frecoma on the basis of the Copyright Act and other intellectual property legislation and regulations. Frecoma has the right to also use the knowledge acquired on the part of Frecoma through the performance of an agreement for other purposes, insofar as this does not disclose strictly confidential information belonging to the Other Party to third parties.

#### 13 Applicable law, disputes

- 13.1 The law of the Netherlands exclusively applies to all legal relationships which Frecoma is party to, also if an obligation is wholly or in part fulfilled abroad, or if the party involved in the legal relationship has its place of business abroad. The applicability of the Vienna Sales Convention is excluded.
- 13.2 The court in the place of business of Frecoma has exclusive jurisdiction to hear and determine disputes, unless mandatory legal provisions prescribe otherwise. Frecoma nevertheless has the right to submit the dispute to the court of competent jurisdiction in accordance with the law.