

# General Terms & Conditions

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Expandable  
Movable Spaces



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# General terms & conditions

## ARTICLE 1 – DEFINITIONS

The following terms are defined as below:

**General Terms and Conditions:** means the most recent version of these General Terms and Conditions of Expandable.

**Expandable:** Expandable B.V. (Chamber of Commerce: 53039998).

**Client:** A counterparty, customer, and/or supplier of Expandable and the legal entities affiliated with said party, customer, or supplier.

**Agreement:** The agreements between Expandable and the Client.

**User location:** Location where the Client or its client uses, wishes to use, or will use the Product(s).

**Products:** All products (to be) sold, delivered, rented, and/or bought by Expandable to/from the Client, including those described in the Quotation or Agreement.

**Quotation:** All offers of Expandable, including but not limited to its price lists and other statements as well as relevant information mentioned on its website.

**Services:** All services (to be) provided by Expandable to the Client, including those described in the Quotation or Agreement.

**Work:** All activities performed by Expandable for the Client, including but not limited to the installation, construction, dismantling, repair, maintenance, and delivery of Products.

**Delivery:** The date on which the Products/Services have been delivered and/or the Work is performed, as per Expandable's confirmation.

## ARTICLE 2 – APPLICABILTY

**2.1** These General Terms and Conditions apply to and form part of the Agreement, Products, Work, Services, Quotations, and all relations between Expandable and the Client as well as to all negotiations, agreements concluded or to be concluded and other pre-contractual situations between Expandable and the Client, even if these do not lead to an Agreement, as well as to the execution thereof.

**2.2** Applicability of other general terms and conditions, including those of the Client, are excluded. Should other general terms and conditions apply despite the foregoing and a conflict arise between the text of the General Terms and Conditions and such other general terms and conditions, the provisions of the General Terms and Conditions prevail.

**2.3** Deviating terms and conditions only apply to the extent they have been expressly accepted in writing by Expandable and are only effective for the relevant Agreement(s) and/or Quotation(s).

**2.4** In case of conflict between the General Terms and Conditions and the Agreement, the provisions of the Agreement prevail.

**2.5** If at any time Expandable does not exercise its rights under the General Terms and Conditions, this shall not affect its right and ability to do so in the future.

**2.6** Expandable is entitled to amend the General Terms and Conditions at any time. The amended General Terms and Conditions shall retroactively apply to already existing Agreements and Quotations, as well as entered into negotiations. The latest version of the applicable General Terms and Conditions can be found, downloaded, and printed from Expandable's website.

**2.7** If any provision of these General Terms and Conditions for whatever reason is not valid, void or voidable, the other General Terms and Conditions will remain in full force and effect and parties will negotiate on the content of a new provision to replace it, which provision approximates the content, purpose and intent of the original provision as closely as possible.

**2.8** If and to the extent one or more of the provisions of the Agreement are or become not binding, for whatever reason, then the other provisions of the Agreement remain fully effective. In that case, parties will, upon first request of the other party, enter into consultations with the intention of reaching an agreement on a new provision that is in line with the Parties' intentions at the time the Agreement was executed.

**2.9** If multiple (natural or legal) persons have committed themselves under an Agreement or have placed an order for Services, Work or Products, they are always severally and jointly liable for the entirety towards Expandable. A deferral of payment or remission by Expandable for a Client or a proposal to that effect regards that Client exclusively.

## ARTICLE 3 – QUOTATION AND PRICES

**3.1** A Quotation is non-committal. Even if a Quotation is accepted by the Client, Expandable has the right to revoke it within 2 business days after receipt of the acceptance, free of charge.

**3.2** If a Quotation is not accepted by the Client within 2 business days after receipt, Expandable has the right to charge the Client all reasonable and substantiated costs it incurred to make the Quotation.

**3.3** The Quotations of Expandable are leading, any price changes reserved.

**3.4** All prices are exclusive of VAT and all other taxes, levies, duties, or charges. Prices furthermore are exclusive of costs for packaging, transport, Delivery, dismantling, service/maintenance, and the like unless emphatically agreed otherwise in the Agreement. The Client cannot derive any rights from bonuses and/or discounts provided by Expandable in the past.

**3.5** If prices and/or price-determining factors, such as for example wages, materials, currency, import duties, and insurance undergo an increase of more than 15%, even after the establishment of the Agreement, for whatever reason, Expandable has the right to correspondingly adjust the price or terminate the Agreement without the Client being entitled to any compensation. Article 9.3 of these General Terms and Conditions applies.

**3.6** If the performance of the Agreement is delayed with more than 30 days: upon request of the Client, due to the absence of information or instructions or for other reasons lying with the Client, Expandable has the right to increase the price as a compensation for additional costs or loss resulting from such delay (such as loss of interest).

**3.7** Additional or reduced Work arises, amongst other but not exclusively, (i) in case of changes, for whatever reason, to the design, the specifications, the planning, and the like, (ii) if the information provided by the Client is incorrect or incomplete, (iii) in case of a deviation from the estimated quantities, (iv) if legal requirements or rulings by authorities set other standards or specifications than stipulated in the Agreement. Additional Work is settled on the basis of the price-determining factors that apply at the time the additional Work is carried out. If Expandable takes on additional Work without expressly setting a price for it in the Quotation and/or Agreement, Expandable is entitled to charge a reasonable fee for it. Reduced Work is settled on the basis of the price-determining factors that applied at the time the Agreement was concluded.

**3.8** Unless established otherwise in writing, Expandable performs the Work at the location of its choosing. Should Expandable and the Client mutually agree that Expandable performs Work at a location of Client's choosing, then the Client makes sure and warrants that Expandable can perform the Work undisturbedly at the location indicated by the Client and at the established time and that during the performance of the Work Expandable will have at its disposal the required facilities, such as gas, water, electricity, heating; closable dry storage space as well as all facilities prescribed on grounds of health and safety legislation. The Client is liable for all damage, including such resulting from loss, theft, fire, or property damage regarding goods of Expandable, of the Client and/or of third parties, such as tools and material intended for the Work, which are located at the location indicated by the Client.

**3.9** Expandable is entitled to claim an advance payment. Expandable has the right to set off any advance payments made by Client against outstanding invoices, regardless of whether such advance payment relates to the same Agreement or to a different Agreement than the Agreement to which the outstanding invoice relates.

## ARTICLE 4 – PAYMENT

**4.1** The payment of the invoices of Expandable must effectively take place in the currency indicated on the relevant invoices. Invoices must be paid within the payment term indicated in the Quotation and if no such term is indicated within 30 days of the invoice date, without any discounts, deductions or set-offs. The Client does not have the right to suspend or set off its payment obligations. The value date indicated on the bank statements of Expandable is considered the day of payment.

**4.2** All payments to Expandable will be applied to first satisfy (1) costs, followed by (2) interest and (3) principal sums.

**4.3** If the Client does not comply with its obligations towards Expandable, the Client is immediately in default, without any default notice being required. In case the Client fails to meet its (payment) obligations, Expandable has the right to suspend its performance or to terminate the Agreement, without notice and without prejudice to the right of Expandable to full compensation. From the day the Client is in default until the day of full settlement (whereby a part of a month is calculated as a full month), the Client owes Expandable default interest in the amount of 1.5% per month (calculated pro rata, whereby a month equals 30 days) of the amount owed, without prejudice to the right of Expandable to compliance, suspension, rescission and/or full indemnification pursuant to the law. All (actual) collection costs, both judicial and extrajudicial costs, are borne by the Client, with a overall minimum of EUR 1.500 ex VAT. This includes the costs of seizure, bankruptcy application as well as the actual costs of lawyers, bailiffs, and other experts to be deployed by Expandable.

**4.4** Other than Expandable, the Client is not entitled to set off the claim Expandable against that which the Client may or may not claim from Expandable, whether or not due and payable. The Client is not entitled to suspend its (payment) obligations to Expandable.

**4.5** Upon first request from Expandable the Client must settle advance payments as indicated by Expandable. Expandable moreover has the right to demand adequate security from the Client, at the latter's expense and risk. The Client must lodge (additional) security upon first request, such as for example, a bank guarantee or a lien to (all) assets. If the Client is in default with the settlement of advance payments or with lodging the security required, Expandable is authorized to suspend its performance or to terminate the Agreement. The Client must establish a lien upon first request and for the benefit of Expandable, on its goods as well as on all its current and future claims, as a security for the payment by the Client of all its existing and future debts towards Expandable, including those on account of damages, collection costs, interest and/or fines. The Client declares to be authorized to establish such lien and hereby grants Expandable an irrevocable authorization to do so on its behalf.

**4.6** Invoices are considered accepted and approved by the Client if Expandable has not received an objection within 8 days after the invoice date by way of registered mail. An objection to an invoice does not give the Client the right to suspend its payment obligations.

**4.7** If the Client is not the end user of the Products supplied by Expandable, Expandable shall be entitled, if payment is overdue for a period of at least three (3) months, to inform the end user and, if necessary, enter into an agreement directly with the end user.

## ARTICLE 5 – DELIVERY

**5.1** Unless explicitly established otherwise in writing, Delivery (transfer of risk) of the Products/Services will by default take place at the address of Expandable (FCA) in Eersel, the Netherlands (or its principal place of business in that country or a location elsewhere in that country to be designated by Expandable), Incoterms® 2020. Expandable performs the Work at its premises at said location. The Client is responsible for collecting, transportation and all other activities to and from said location. If Expandable, for whatever reason, arranges transportation, this always takes place at the expense and risk of the Client. All damages to Products during transportation are equally for the account of the Client only.

**5.2** The Products will be deemed to have been delivered by Expandable, accepted by the Client and falling under the Client's risk, as soon as the Products are presented to the Client and/or as soon as the Products have been loaded into or onto the means of transport at the address of Expandable (FCA) in Eersel. This applies even if the Client refuses or fails to take delivery.

**5.3** Expandable has the right to deliver the Products in batches (partial deliveries) and to invoice these partial deliveries separately.

**5.4** The Products are at the risk of the Client from the moment of Delivery, or from the moment receipt is refused or is considered to have been refused.

**5.5** Receipt is considered to have been refused if the Products were offered for Delivery, but Delivery did not take place. The day on which Delivery is refused is the day of Delivery.

**5.6** The Client must collaborate with Delivery on the date indicated by Expandable (e.g. by picking up the Products). In case the Client fails to receive the Products, the Products are stored at its risk. If the Client still fails to receive the Products after 30 days of the original Delivery, Expandable has the right to (partially) terminate the Agreement and pass on to the Client all costs incurred in consequence, such as cost of storage, transport, and insurance as well as damages suffered, such as loss of turnover and profit. This also applies in case of failed Delivery due to circumstances within the control of the Client, such as lack of facilities, licenses and/or permissions. In such cases, Expandable has the right to not make the Products available to the Client until after the abovementioned costs have been paid by the Client. If the Products have not been picked up by the Client after 6 months after the original Delivery, Expandable will be entitled to resell or destroy the Products at the expense and risk of the Client. The Client will not be able to bring a claim against Expandable in this respect. Article 9.3 of these General Terms and Conditions applies.

**5.7** Delivery of the Work takes place (i) upon approval by the Client of the Work, (ii) when Expandable has notified the Client that the Work is completed and the Client has not communicated in writing within 14 days after said notification whether or not the Work has been approved, (iii) if the Client does not approve the Work on grounds of minor defects or missing parts that can be remedied within 30 days; or (iv) if the Client does not approve the Work on grounds of apparently unfounded complaints.

**5.8** If the Client does not approve the Work, it must forthwith communicate this, within 14 days after Expandable has notified the Client that the Work is completed, in writing to Expandable under detailed specification of reasons, whilst enabling Expandable to deliver the Work anew. The provisions of this article are thereby applicable again (each time).

**5.9** Expandable is never in default by the mere expiry of a term, including the delivery time, nor does this confer the right to the Client to be compensated. For default to occur, a written notice of default by registered mail is always required, giving Expandable a reasonable period of time, i.e. at least 2 months, to comply.

**5.10** The agreed delivery time period starts when an agreement has been reached on all commercial and technical details, all necessary information, definitive and approved drawings, etc. are in the possession of Expandable, the established (instalment/advance) payments have been received and all other necessary conditions for the performance of the Agreement have been complied with. Furthermore, in case: i) of changed circumstances compared to those that were known to Expandable when it established the delivery time, Expandable has the right to extend the delivery time to the extent necessary to perform the Agreement under these changed circumstances. ii) of additional Work, the delivery time is extended by the time required for the supply of materials/components/parts and the performance of the additional Work. iii) Expandable suspends its obligations, the delivery time is extended by the duration of the suspension. iv) of force majeure or unworkable circumstances, due to, for example, weather, the delivery time is extended with the resulting period of the delay.



# ARTICLE 6 - INTELLECTUAL PROPERTY AND EXTENDED RETENTION OF PROPERTY

**6.1** It is strictly forbidden for the Client to change, remove or bypass any indication(s) or technical measures concerning the confidential nature or intellectual property rights from software, Expandable websites, data files, equipment, Quotations, Services, Products, and/or Work.

**6.2** All intellectual property rights embodied in or arising out of the Products, Quotations, Services, Expandable websites, and/or Work shall belong exclusively to Expandable, its licensors, or its suppliers, regardless of whether costs were charged to the Client for its creation or manufacturing and irrespective of the Client's share in their realization. If Expandable undertakes to transfer an intellectual property right, such an undertaking can only be entered into expressly and in writing. If a dispute arises about who is the owner of the intellectual property rights embodied in the Services, Products, and/or Work, Expandable is deemed to be the sole owner save evidence to the contrary to be provided by the Client.

**6.3** The exercise of aforementioned rights of intellectual property – including publication, transfer, reproduction, distribution of data, all in the broadest sense of the word – both during and after the execution of the Agreement is expressly and exclusively reserved to Expandable.

**6.4** The Client must refrain from using, multiplying, distributing, and/or providing to third parties any information in which any intellectual property rights as mentioned in the previous paragraphs are embodied, unless with the prior written consent of Expandable. The Client is entitled to use the data and information provided to it by Expandable, only in connection with the Agreement. These data and this information remain the property of Expandable. The Client (only) acquires the rights of use expressly granted by these General Terms and Conditions, the Agreement, and/or the law. A right of use to which the Client is entitled is non-exclusive, non-transferable, nonmandatory, and non-sublicensable.

**6.5** If the parties agree in writing that an intellectual property right with regards to Products, Services, and/or Work specifically developed for the Client is to be transferred to the Client, this does not affect the right or the possibility of Expandable to use and/or exploit the components, general principles, ideas, designs, algorithms, documentation, works, programming languages, protocols, standards and the like underlying that development, without any restriction, for other purposes, either for itself or for third parties. Likewise, the transfer of an intellectual property right does not affect the right of Expandable to use developments similar or derived from those made or to be made, for its own benefit or for that of a third party.

**6.8** Expandable retains the ownership of all goods delivered by or on behalf of it until the Client has fulfilled all payment obligations under the relevant Agreement. Expandable retains ownership of the delivered goods on the basis of the relevant Agreement, for as long as the Client: (i) has not paid the total amounts owed under the Agreement; (ii) fails to comply or will fail to comply with any of its obligations pursuant to the Agreement and/or; (iii) has not settled claims which result from non-compliance, damage, fines, interest, and costs in relation to the Agreement. For as long as goods are subject to a retention of property, they do not fall within the realm of the Client's property and hence the Client can nor may alienate, encumber or transfer these goods outside the scope of its regular business operations (not at property rights level and not contractually). Ownership of the goods passes to the Client upon full payment of the amounts due under the Agreement.

**6.9** Expandable has the right to access at all times all Products which are its property, wherever they are located, and to be informed of their location. With regards to all Products covered by the retention of property of Expandable, the Client must forthwith inform (and keep informed) Expandable in writing of any damage caused to or by these Products, provide Expandable testimonies and/or other documentation regarding the underlying event(s) and/or have drawn up a police report of such event(s). If and when Expandable invokes its retention of property, it has the right to take back (possession of) the Products, and the Client must cooperate and assist at the first request.

**6.10** The Client undertakes to insure and keep insured the interests of Expandable in connection with the retention of title.

**6.11** In the event of any breach of (any of) the obligation(s) set forth in this article, the Client shall forfeit, without any notice of default or any other prior declaration being required, to Expandable or its legal successor(s) a penalty, that is immediately due and payable and that is not subject to deduction, suspension or set-off, in the amount of EUR 100.000,-- per breach, to be increased by the amount of EUR 1.000,-- for each day or part of a day that such breach continues, insofar as it is a continued breach. To the extent necessary and permitted by law the parties hereto explicitly agree that this penalty qualifies as liquidated damages (forfaitaire vaststelling van reëel te lijden schade). The penalty is immediately due and payable, but the Client has the right to contest the (amount of the) penalty and its reasonableness in court. This penalty is without prejudice to the right to compensation, insofar as the damages incurred exceed the total forfeited penalty, to demand performance, to initiate and conduct proceedings (including any interlocutory proceedings), the right to obtain a judicial prohibition and/or to terminate all existing business relationships and Agreements (if any) with the Client (without having to take into account any notice period), in addition to all other rights arising from the law. The amount of the penalty is increased by the statutory commercial interests as per article 6:119a of the Dutch Civil Code, which becomes payable as of the day the penalty is due.

# ARTICLE 7 – MAINTENANCE AND WARRANTY

**7.1** As long as Expandable owns Products, with regards to these Products (for example: during rental or when Products are subject to a retention of property) the following applies: (i) Without the prior written consent of Expandable, the Client will not apply or allow any changes in or to the Products. Upon first request of Expandable, the Client will at its expense and risk, take care of the removal of applied materials and of restoral in the original condition of the Products (even if Expandable approved the materials/ changes), without the Client being entitled to any compensation. (ii) Except with the prior written consent of Expandable, modifications, maintenance, and/or repairs to Products may exclusively be carried out by Expandable or by third parties approved by Expandable. (iii) The Client is deemed to have received the Products in good condition; the Client must use the Products diligently, in accordance with the intended use, and keep the Products in good condition at its own expense and risk. (iv) Expandable has the right to control the Products from time to time. In case Expandable holds that the Products are used in an improper manner or neglected, Expandable has the right to retake possession of the Products and/ or restore them in good condition at the expense of the Client. (v) It is strictly forbidden for the Client to sell, transfer, (sub-)let, encumber or otherwise give in use to a third party the Products, unless explicitly agreed otherwise in the Agreement. Expandable has the right to track (the location, whether by means of a GPS module or otherwise), and to manage the Products it owns (including the systems present in these Products). To the extent required, the Client is deemed to have consented to the aforementioned tracking and managing by Expandable.

**7.2** All costs for legally mandatory, preventive, corrective, usage-dependent, and all other maintenance to the Products are borne by the Client. The same holds true for repairs, except for repairs under the below warranty obligation.

**7.3** Expandable performs all maintenance, modification, and/or repair activities (only) in Eersel, the Netherlands (or its principal place of business in that country). The Client must, at its own expense and risk and in coordination with Expandable, arrange for the Products to be transported to and from that location or another location indicated by Expandable. Maintenance, modifications, and/or repairs by Expandable never regard materials, components, equipment and/or parts (or their interaction with the Products), not provided or freely chosen by Expandable, such as those provided by or used/added on request of the Client. The Client must at all times take care of this at its own expense and risk. this warranty or if in the opinion of Expandable, there is a reasonable chance that such warranty appeal is justified, Expandable will, to the extent this is reasonably possible, make the necessary repairs or modifications, free of charge. Any other or further warranty obligation of Expandable is excluded. The Client can only invoke this warranty after it has fulfilled all its obligations towards Expandable and it has provided Expandable with satisfactory written proof (in the form of invoices or formal certificates) of sufficient and correctly conducted maintenance, taking into consideration the needs in view of the characteristics and climate conditions of the User location. No warranty applies in case the defects are the result of normal wear and tear, aging, improper or inexperienced use, external causes, or force majeure. In this context, reference is also made to the provisions set out in Article 8.

**7.4** For a period of 12 months following Delivery, Expandable warrants that the Products comply with the specifications adopted by Expandable and that the materials, components, equipment, and/or parts it used are sound. This warranty does not apply to materials, components, equipment, and/or parts not provided or freely chosen by Expandable, such as those provided by, used/added on request of or prescribed by the Client (or their interaction with the Products or damage caused by them to the Products). The same holds true for Products that were not new at the time of their Delivery as well as for tires, moving components, windows/glass, sealants, or exterior paint. All damage to aforesaid excluded goods is borne by the Client (the Client must provide for adequate insurance, at its own expense and risk). The warranty lapses if the Products are modified or manipulated in any way, components are added to it, and/or repairs or maintenance are/is performed, without the prior written consent of Expandable. No warranty is granted for mere esthetical effects that do not interfere with or substantially hinder the normal use of the Products. If it has been irrevocably established legally that the Client rightfully invokes this warranty or if in the opinion of Expandable, there is a reasonable chance that such warranty appeal is justified, Expandable will, to the extent this is reasonably possible, make the necessary repairs or modifications, free of charge. Any other or further warranty obligation of Expandable is excluded. The Client can only invoke this warranty after it has fulfilled all its obligations towards Expandable and it has provided Expandable with satisfactory written proof (in the form of invoices or formal certificates) of sufficient and correctly conducted maintenance, taking into consideration the needs in view of the characteristics and climate conditions of the User location. No warranty applies in case the defects are the result of normal wear and tear, aging, improper or inexperienced use, external causes, or force majeure. In this context, reference is also made to the provisions set out in Article 8.

**7.5** Expandable does not warrant that the (use of the) systems present in the Products comply with (local) regulations and/or (safety) requirements, either applicable at the location(s) where the Client or the end user have their offices, the User location, or elsewhere. All inspections, risk inventories/analysis, labor conditions, evaluations, and/or other measures or actions regarding (the use of) systems present in the Products, that are required by government authorities, local regulations, and/or utility companies, must be performed by the Client at its own expense and risk, even if (local) rules established by these authorities stipulate that this is Expandable's responsibility. Expandable is not liable for the consequences should the Client fail to or the Products not comply with said (local) rules, requirements, and/or regulations. The Client indemnifies Expandable against any and all related claims. In connection with the use, maintenance, and storage of the Products by the Client, the Client must be compliant with all legal requirements, including requirements for permits or instructions of the competent authorities. The Client will not use or store any hazardous substances in the Products, except if and to the extent, this is customary for business operations. The use or storage of hazardous substances takes place exclusively at the expense and risk of the Client. The Client must provide and maintain fencing or other measures at the User location if this is required pursuant to the (locally) applicable laws and regulations or other regulations from the competent authorities. The Client is responsible for and must at its expense and risk make sure that it has the permits, exemptions, and approvals required for placement, installation, Delivery, use, and dismantling of the Products (such as environmental permit, driveway license, and other permits).

**7.6** In case of frost, snow, or other adverse weather conditions, the Client must take all measures necessary to prevent damage to the Products (and its internal systems) and/or the freezing of (heating) systems and/or conduits. All damage to the Products due to weather conditions is borne by the Client.

**7.7** In the event of any breach of (any of) the obligation(s) set forth in this article, the Client shall forfeit, without any notice of default or any other prior declaration being required, to Expandable or its legal successor(s) a penalty, that is immediately due and payable and that is not subject to deduction, suspension or set-off, in the amount of EUR 100.000,-- per breach, to be increased by the amount of EUR 1.000,-- for each day or part of a day that such breach continues, insofar as it is a continued breach. To the extent necessary and permitted by law the parties hereto explicitly agree that this penalty qualifies as liquidated damages (forfaitaire vaststelling van reëel te lijden schade). The penalty is immediately due and payable, but the Client has the right to contest the (amount of the) penalty and its reasonableness in court. This penalty is without prejudice to the right to compensation, insofar as the damages incurred exceed the total forfeited penalty, to demand performance, to initiate and conduct proceedings (including any interlocutory proceedings), the right to obtain a judicial prohibition and/or to terminate all existing business relationships and Agreements (if any) with the Client (without having to take into account any notice period), in addition to all other rights arising from the law. The amount of the penalty is increased by the statutory commercial interests as per article 6:119a of the Dutch Civil Code or, if such interests are not due and/or cannot be claimed, a contractual interest in amount equal to the statutory commercial interest rate pursuant to Article 6:119a of the Civil Code, that become payable as of the day the penalty is due. Articles 6:92 and 6:93 of the Dutch Civil Code do not apply.

## ARTICLE 8 – COMPLAINTS

**8.1** The Client must inspect the Products directly upon Delivery. Any possible complaints about malfunctions or defects must be reported to Expandable no later than within 5 business days after Delivery in written and substantiated form, specifying the nature of the defect. Malfunctions or defects which demonstrably could not reasonably have been discovered sooner must be reported to Expandable immediately upon discovery, yet no later than within 10 business days following Delivery in written and substantiated form, specifying the nature of the defect. The overrunning of these terms will lead to the forfeiture of the rights of the Client to obtain compliance and/or indemnification or a remedy otherwise with regard to the relevant defect and/or complaint, unless the overrunning of these terms is due to force majeure, the malfunction/defect could not have reasonably been discovered sooner and/or the Client requested Expandable in writing for an extension before the expiry of said terms, which extension shall not be unreasonably denied by Expandable.

**8.2** Complaints regarding the charged prices and other complaints regarding invoices must be submitted in writing by the Client to Expandable within a maximum of 5 business days after the invoice date, specifying the nature of the complaint. Complaints lodged after the expiry of this term will not be accepted.

**8.3** The Client must actively enable Expandable to investigate the merits of a complaint within the meaning of this article, failing which any right to warranty lapses.

**8.4** The Client must keep a defective part and return it to Expandable, upon the first request of Expandable. The return of the Products can only take place after the prior written consent of Expandable, under conditions to be established by Expandable. A return of Products or parts is always at the expense and risk of the Client.

**8.5** Complaints will not be considered and warranty does not apply, if: (i) there are minor deviations in quality, quantity, material, size, colour and other deviations deemed permissible in the industry, (ii) there is a deviation from the Product in comparison with an image in the brochures and other promotional materials of Expandable, (iii) there is an incorrect and/or difference in expectations on the part of the Client, while the Work has been executed in accordance with the instructions of the Client, as laid down in the Agreement, (iv) a defect results from drawing, sketch, design, specification, material or information provided and/or made available by the Client, (v) the Client has repaired, modified or caused third parties to repair or modify the Products itself, (vi) the Products delivered have been exposed to abnormal conditions, or have otherwise been treated without due care, or contrary to the instructions of Expandable and/or not in accordance with generally accepted professional practice.

**8.6** If and to the extent a complaint by the Client is legitimate, Expandable will, at its own discretion and to the exclusion of any and all other remedies, either: (i) restore the defect(s) free of charges, (ii) replace the Products free of charges, (iii) deliver Services or carry out Work anew. Complaints are not accepted if the defects do not hinder or substantially obstruct the use of the Products, unless explicitly agreed otherwise between Parties in writing. Complaints never give the Client the right to suspend its (payment) obligations towards the Client.

# ARTICLE 9 – TERMINATION, COMPENSATION, AND SUSPENSION

**9.1** Expandable is authorized to completely or partially terminate the Agreement with immediate effect and without requiring notice or any other judicial intervention, by way of written notification to the Client, without being liable for compensation and without prejudice to the rights of Expandable in lieu of termination, to demand performance and without prejudice to its right to compensation, if:

1. The Client applies for bankruptcy, is declared bankrupt or bankruptcy is filed, or requests suspension of payment or has obtained such, or applies for admission to the Natural Persons Debt Rescheduling Act (WSNP) or that it is granted admission to the WSNP, or if the Client's creditors initiate actions within the framework of a debt restructuring or payment arrangement;
2. The Client undergoes a substantive change to its activities and/or legal and/or organizational set-up, ceases its activities or significantly reduces them, loses the free control or a considerable part of its assets due to a seizure, or is placed under guardianship or forced administration;
3. The Client falls short in complying with an obligation pursuant to the Agreement or these General Terms and Conditions, even after having been given a term of at least 30 days to comply by means of a written notice;
4. The Client falls short and compliance is impossible, a situation as intended in article 6:83 of the Dutch Civil Code occurs or a shortcoming repeats itself which was the object of the default earlier as intended under 3 in the preceding;
5. The Client undergoes a change to its control;
6. The Client fails to settle an invoice amount or a part thereof within the term established for this, even after having been given a term of at least 30 days to comply by means of a written notice; in such cases, the Client is considered to be legally in default and all claims of Expandable towards the Client are immediately due and the termination takes place without prejudice to Expandable's other rights;
7. The Client shuts down or threatens to shut down its business;
8. After the conclusion of the Agreement, circumstances come to the knowledge of Expandable that give good reason to fear that the Client will not be able to completely fulfil the obligations under the Agreement and/or these General Terms and Conditions.

or if Expandable can reasonably assume that any of the aforementioned situations will occur in the near future.

**9.2** Unless explicitly agreed otherwise in writing, the Client is not entitled to terminate the Agreement, unless if Expandable is declared bankrupt. In addition it is specifically agreed that the Client may, under no circumstance, prematurely terminate any lease that was entered into for a fixed term, not even if the Client reserved the right to termination without cause in other contractual documents and/or its general terms. If Expandable explicitly agrees in writing to premature termination of a lease for a fixed term, the Client is under the obligation to pay Expandable, immediately (meaning: per the date the lease ends due to the premature termination) a sum equal to all remaining lease instalments up to the original end date of the lease.

**9.3** In any and all cases in which the Agreement ends prematurely (meaning: before expiration of the agreed term and/or before the agreement has been fully executed), even in cases of force majeure, and/or the Client fails to receive the Products as set forth in article 5 above, it is agreed that all payments made by the Client to Expandable, whether as a deposit or otherwise, fall due and Expandable is under no obligation to repay any amount, however named, to the Client nor is Expandable liable for compensation, all without prejudice to the rights of Expandable in lieu of termination, to demand performance and without prejudice to its right to compensation.

**9.4** In case a third party seizes or encumbers a Product (subsequently called: “the security holder”), which is the property of Expandable, the Agreement between parties ends with immediate effect in case Expandable finds itself in a state of bankruptcy and/or the security holder of Expandable demands release of the Product on grounds of non-compliance with the obligations of Expandable vis-a-vis the security holder. In such case, Expandable is not bound to pay any compensation to the Client nor does the Client have the right of retention or suspension in that case. In that context, Expandable and the Client also exclude the applicability of articles 7:226 and 7:227 of the Dutch Civil Code entirely.

**9.5** In case a situation occurs such as what is intended in article 9.1, Expandable and/or a third party to be indicated by it, is authorized to take back (possession of) the Products that are the property of Expandable (for example: during rental or when subject to a retention of property), free from any rights of the Client and without the obligation of re-delivering the Products back to the Client, to the extent permitted by applicable laws and regulations. In such a case as described in the preceding sections, Expandable and/or a third party indicated by it is authorized to enter the premises and buildings of the Client so as to take possession of the Products, to the extent permitted by applicable laws and regulations. The Client is obligated to cooperate and to take the necessary measures to enable Expandable to enforce its rights. The Client must timely remove goods that were not delivered by Expandable and are in(side) the Products. Expandable is not liable for the goods which are in(side) the Products at the time of seizure.

## ARTICLE 10 – LIABILITY

**10.1** Expandable is only liable vis-a-vis the Client if the Client demonstrates that it has incurred damage caused by intent or wilful recklessness on the part of Expandable or due to a substantive error of Expandable which can be seriously imputed to it and which would have been prevented in case of diligent conduct and exclusively for the direct damage which is the immediate and foreseeable consequence of such substantive error.

**10.2** Expandable can be insured against certain liabilities, but this does not always have to be the case. For this reason, several limitations apply to the liability of Expandable. The obligation of Expandable to compensate damage or to undo, on any grounds whatsoever, is limited to such damage or costs as Expandable is insured against on account of insurance taken out by or for the benefit of Expandable and is never higher than the amount which is disbursed in the relevant case by this insurance (whether or not to Expandable). If Expandable for whatever reason is not entitled to appeal to the limitation of the preceding paragraph (and/or the insurer, for whatever reason, does not pay out), the obligation of Expandable to compensate for damage or to undo, regardless of the basis, is limited to a maximum of the invoice amount which Expandable has billed to the Client exclusive of VAT (with due regard to article 10.12; so never more than the amount set forth therein). If the Agreement consists of components or partial deliveries, the obligation to compensate for damage is limited to a maximum of the invoice amount exclusive of VAT of the relevant component or that partial delivery.

**10.3** Under no circumstance is Expandable liable for indirect damage (including, though not limited to, loss of profit, loss of goodwill, loss of business contacts, e.g. as a result of any delays, loss of data, missed savings, damage due to operational stagnation, damage under its supervision.

**10.4** Expandable shall in no circumstances be liable if the Client has failed to follow, or has failed to follow in full or properly, the advice and/or instructions provided by Expandable and/ or third parties engaged by it.

**10.5** Expandable is not liable for any damage which is caused to goods of the Client on which Work is done or to goods of the Client which are in the vicinity of the place where Work is done, unless such damage is caused by intent or wilful recklessness of Expandable, whatever it is called and by whomever it is suffered. The Client is responsible for taking adequate precautions to protect its goods against potential risks associated with the performance of the Work.

**10.6** Expandable is not liable for damage that could only have been avoided through the action or failure to act which would have been in conflict or irreconcilable with legislation and regulations applicable to Expandable, or otherwise with the (professional) rules of conduct applicable to the professionals involved in the implementation of the Agreement.

**10.7** Outside the cases mentioned in articles 10.1 and 10.2, Expandable is not liable for nor obligated to undo or to compensate for any damage, regardless of the basis of the claim.

**10.8** Expandable may set off the obligation to compensate damage against invoices not paid and their consequent interest and costs.

**10.9** Expandable is entitled to outsource the performance of all or part of the Agreement to third parties and/or to have third parties perform all or part of the Agreement, without the Client's consent being required. Each Agreement or Order issued to Expandable implies the authority on the part of Expandable to engage third parties and to accept any limitations of liability of third parties on behalf of the Client. Engagement by the Client of third parties in the performance of the Agreement requires the express prior written consent of Expandable. Upon the engagement of third parties by the Client Expandable must observe due diligence but it is not liable for errors and/or shortcomings of these third parties.

**10.10** The liability limitations included in this article are effective both for Expandable (itself) and for its staff (both individually and jointly), as well as for all other parties associated with Expandable and their employees (whether or not deployed for the activities). Only Expandable is liable for damage in connection with the Agreement, Products, Quotations, Services, and/or Work, also if activities were conducted by its staff (both individually and jointly) or other parties associated with Expandable and their employees (whether or not deployed for the activities).

**10.11** Expandable has the right at all times to undo the damage incurred by the Client in a manner that is appropriate for and is in line with the substance of the Agreement and the nature of the activities. The Client must take damage-limiting measures. Others than the Client cannot derive any rights from the Agreement and its (non-)execution. The Client indemnifies Expandable against any possible third-party claims, except to the extent the damage is indisputable caused by intent, wilful recklessness or a defect directly and seriously imputable to Expandable. The Client indemnifies Expandable against all claims from third parties on account of product liability as a result of a defect to a product that was delivered by the Client to a third party or given in use and which (partly) consisted of Products, unless the defect is directly and seriously imputable to Expandable.

**10.12** Expandable is never liable for advice, information, or consultancy work relating to the Agreement, Products, Quotations, Services, and/or Work unless an explicit and separate Agreement was concluded with the Client under which the Client provides a quid pro quo for the advice, information or consultancy work provided by Expandable. Expandable is never liable for damage associated with or resulting from the drawings, calculations, designs, samples, models, and the like made by or on behalf of the Client nor for damage associated with or resulting from the use, installation, and/or removal, whether or not this occurs in and/or from the Products, of materials, products, components and the like prescribed by or on behalf of the Client. The Client is responsible for aforesaid goods and warrants the functional suitability thereof. The Client indemnifies Expandable against any third-party claim regarding the aforesaid. Should Expandable be liable on the basis of this article, this liability is limited to the invoice amount of the advice, information, or consultancy work that is the subject of the liability (with due regard to article 10.13; so never more than the amount set forth therein).

**10.13** If, despite what is stipulated in the preceding sections of this article, Expandable is held legally accountable for damage, that liability is limited in all cases, on whatever grounds (including the costs associated with an obligation to undo), to the lower of the purchase price mentioned in the Quotation or the purchase price received by Expandable (ex VAT, costs, taxes, etc.) for the Product, Service and/or Work the liability relates to.

**10.14** Without prejudice to article 6:89 of the Dutch Civil Code, any claim of the Client against Expandable lapses if, after the expiry of 1 year after the arising of the claim, the Client has not effectively instituted legal proceedings on the merits against Expandable.

**10.15** If at any time the AI act or related legislation and/or regulations apply, Expandable shall in no circumstances be liable for any damage resulting from the application, use and/or configuration of the AI system.

## ARTICLE 11 – FORCE MAJEURE

**11.1** If Expandable cannot (reasonably be expected to) adequately perform its obligations under the Agreement, including the warranty obligation referred to in article 7 of these General Terms and Conditions, as a direct or indirect consequence of force majeure or other non-attributable failures, Expandable is not liable for any damage of the Client and fulfilment of the obligations of Expandable is suspended until the moment that Expandable can (be reasonably expected to) resume performance.

Force majeure on the part of Expandable's suppliers is considered force majeure of Expandable.

**11.2** A non-attributable failure on the part of Expandable shall mean any circumstance independent of Expandable – even if it was already foreseeable at the time the Agreement was concluded – that causes compliance with the Agreement permanently or temporarily impossible, including in any case, but not limited to:

1. damage resulting from natural disasters and/or severe weather conditions;
2. war, danger of war and/or any other form of armed conflict including terrorism or threat thereof in the Netherlands and/or other countries as a result of which supply of goods or raw materials is hampered;
3. unexpected defects, (power) failures, computer viruses, work strikes, forced shutdown, riots and any other form of disruption and/or hindrance at Expandable or at its suppliers;
4. theft, loss of or damage to goods in transit;
5. pandemics, epidemics, quarantines and/or illness of one or more objectionably replaceable employees or a third party engaged by it;
6. governmental legislative or administrative measures which impede deliveries, including import and export bans and the withdrawal of subsidies or funds;
7. fire(danger) or accidents on the premises of Expandable, or any external space put into use;
8. non-delivery or late delivery to Expandable by suppliers or other third parties and/or other transport issues.

**11.3** If the aforesaid situation is permanent or has lasted for 2 months, Expandable has the right to (partially) rescind the Agreement, without judicial intervention, without any obligation to compensate damages and without prejudice to the right of Expandable to payment by the Client for the part that was performed or delivered before said situation occurred or was known by Expandable, whatever occurs last.

**11.4** The Client will notify Expandable in writing as soon as possible in the case the Client faces a (possible) force majeure situation, thereby specifying the circumstances, consequences and probable duration. The Client will take all reasonable measures to overcome such circumstances or provide alternatives. If the Client cannot fulfil its obligations due to force majeure, Expandable has the right to immediately terminate the Agreement entered into with the Client by a statement to that effect, without Expandable being obliged to pay any compensation in this respect.

**11.5** Force majeure on the part of the Client in any case does not include, both at the Client as at third parties engaged by the Client, the lack of personnel, strike or illness of personnel, business disturbances, liquidity problems and/or shortcomings in the performance of third parties engaged by the Client.

## ARTICLE 12 – PROTECTION OF PERSONAL DATA

**12.1** If and to the extent this is necessary for the performance of the Agreement, the Client must inform Expandable in writing, upon first request, of the manner in which the Client fulfills its obligations under the legislation on the protection of personal data, including, if applicable, but not limited to, Regulation (EU) No 2016/679 (hereinafter: GDPR). The Client warrants vis-à-vis Expandable that it, as well as its employees and contractors, including all third parties involved by or on behalf of the Client in the Agreement, shall fulfill the obligations arising from the GDPR.

**12.2** The Client indemnifies Expandable against claims by third parties or data subjects within the meaning of the GDPR in the context of the processing of personal data by or for the benefit of the Client or for which the Client is the data controller or otherwise responsible by law, unless the Client proves that the facts underlying the claim are directly and seriously attributable to Expandable and can be seriously imputed to it.

**12.3** The client bears full responsibility for the (personal) data processed in the performance of the Agreement or using a Service or Product. The Client warrants vis-à-vis Expandable that the content, use, and/or processing of such data complies with applicable laws, is not unlawful and does not infringe any right of a third party. The Client indemnifies Expandable and holds Expandable harmless against all claims of and any legal action by a third party, for whatever reason, in connection with these data or the performance of the Agreement, whether or not such claim results in damages.

**12.4** To the extent necessary, by using Services or Products, the Client gives explicit consent to Expandable for the processing and transfer, including cross-border, of personal data on behalf of the Client. To the extent that personal data is processed by Expandable in connection with the performance of the Agreement, the Client acknowledges that such processing is necessary for the execution of the Agreement and that hence consent is not required.

## ARTICLE 13 – (PARA) MILITARY USE OR ARMED PURPOSES

**13.1** If the Products or Services supplied by Expandable are used (or meant) for military, paramilitary, or comparable purposes, or in connection with any armed conflict, (military) training or military operation, the following provisions apply and prevail over the other provisions in the General Terms and Conditions:

1. All damage, including but not limited to personal injury, property damage and financial loss, shall be for the sole account and risk of the Client. Expandable cannot be held liable for damages, unless the damages are covered by an insurance taken out by or for the benefit of Expandable, but only to the extent of the amount which is actually disbursed in the relevant case by this insurance. The Client must provide for adequate insurance, at its own expense and risk.
2. The Client indemnifies Expandable against all third-party claims.
3. The Client is solely responsible for determining whether the Products or Services comply with all applicable laws, regulations, procurement requirements, operational standards, export control, sanctions laws, etc.
4. No warranty applies and no warranty is granted by Expandable.

## ARTICLE 14 – OTHER PROVISIONS

**14.1** A waiver of rights by Expandable can only take place by way of an explicit written notification to that effect. If Expandable does not exercise any of its rights pursuant to the Agreement or postpones its exercise, this cannot be considered as a waiver of that right nor of any other right pursuant to the Agreement.

**14.2** The Client does not have the right to completely or partially transfer its rights from the Agreement, nor to encumber or otherwise alienate them. This clause is a clause as intended in article 3:83 section 2 of the Dutch Civil Code. This clause thus has both contractual effect and effect in the area of property rights. It is therefore not possible (at the level of property rights) to transfer, encumber, or otherwise alienate rights from the Agreement (whether or not partially).

**14.3** Expandable has the right to transfer its rights and obligations resulting from the Agreement to a third party and/or to sell the Products to third parties. The Client hereby grants its unconditional and irrevocable cooperation beforehand for the transfer of the Agreement. Expandable has the right to encumber or cede the Products and the rights resulting from the Agreement.

**14.4** The Client does not have the right to suspension, retention, or set-offs. Expandable is authorized to suspend its obligations under an Agreement and/or the release of goods which it has under its control on account of the implementation of the Agreement until it has received payment of all its claims towards the Client or until sufficient security has been lodged.

## ARTICLE 15 – CONFIDENTIALITY

**15.1** The Client undertakes towards Expandable to keep strictly confidential and to not use, multiply, or disclose, all information, in the broadest sense of the word, regarding Expandable or relative to the negotiations and/or Agreement, except with the written permission of Expandable and insofar as it is strictly necessary for the implementation or execution of the Agreement. For its part, Expandable is obliged to maintain strict confidentiality with respect to all that becomes known to it with respect to business information directed to specific characteristics of the business or company of the Client, subject to written permission from the Client to disclose this information.

**15.2** Every Quotation and Agreement is strictly confidential. The Client shall not use and/ or disclose them, including for marketing and/or commercial purposes.

**15.3** The obligation of confidentiality shall remain in full force even after delivery or termination of an Agreement.

**15.4** Unless prior written consent has been obtained from Expandable, the Client is prohibited from having or maintaining contact with third parties involved in the Agreement.

## ARTICLE 16 – PENALTY CLAUSE

For each violation of any of the articles of these General Terms and Conditions except article 7, the Client forfeits to Expandable or its (or their) legal successor(s), without any notice of default or any other prior declaration being required (no default required), an immediate fine of EUR 25.000 for each violation, which is not subject to deduction, suspension or setoff, payable without further notice of default or judicial intervention, to be increased by EUR 1.000 for each day or part of a day that the violation continues, insofar as it is a continued breach. To the extent necessary and permitted by law the parties hereto explicitly agree that this penalty qualifies as liquidated damages (forfaitaire vaststelling van reëel te lijden schade). The penalty is immediately due and payable, but the Client has the right to contest the (amount of the) penalty and its reasonableness in court. This penalty is without prejudice to the right to compensation, insofar as the damages incurred exceed the total forfeited penalty, to demand performance, to initiate and conduct proceedings (including any interlocutory proceedings), the right to obtain a judicial prohibition and/or to terminate all existing business relationships and Agreements (if any) with the Client (without having to take into account any notice period), in addition to all other rights arising from the law.. The amount of the penalty is increased by the statutory commercial interests as per article 6:119a of the Dutch Civil Code or, if such interests are not due and/or cannot be claimed, a contractual interest in amount equal to the statutory commercial interest rate pursuant to Article 6:119a of the Civil Code, that become payable as of the day the penalty is due. Articles 6:92 and 6:93 of the Dutch Civil Code do not apply.

# ARTICLE 17 – APPLICABLE LAW AND COMPETENT COURT

**17.1** The Agreement, the agreements resulting from it, and everything related thereto are exclusively governed by Dutch law. Applicability of the 1980 Vienna Convention (The United Nations Convention on Contracts for the International Sale of Goods, CISG) is excluded. The Agreement, the agreements resulting from it, and everything related thereto are exclusively governed by Dutch law. Applicability of the 1980 Vienna Convention (The United Nations Convention on Contracts for the International Sale of Goods, CISG) is excluded.

**17.2** All disputes that will arise in respect of the aforesaid, including situations that are considered a dispute by only one of the parties and disputes regarding the existence and validity of the Agreement, will be exclusively settled by the competent Dutch court in the district of the principal place of business of Expandable, without prejudice to the right of appeal and cassation and the right of Expandable to bring an action before the court in the district of the principal place of business of the Client or, in case of action regarding a cross-border debt collection, before another competent Dutch court.

**17.3** If the Client is domiciled, has an office, and/or trades in a country that is not a member of the European Union and/or in the event of a situation that does not fall within the scope of Regulation (EU) No. 1215/2012 or its equivalent, without prejudice to the previous paragraph of this article, Expandable is entitled to submit a dispute to the Netherlands Arbitration Institute in accordance with the Arbitration Regulations of that institute. The arbitral tribunal shall consist of one arbitrator that shall be appointed in accordance with the listing procedure. The place of arbitration is Eindhoven, the Netherlands, and the proceedings will be conducted in English. If and as soon as Expandable has instituted proceedings with the Netherlands Arbitration Institute, this body has exclusive jurisdiction to settle the dispute in question, and the Dutch court no longer has jurisdiction.

**any questions?**  
contact us

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