



Dr. Jekyll & Mr. Hyde[®]

THE EXHAUST

General sale and delivery terms and conditions of The Jekyll and Hyde Company BV 2020

Article 1 Definitions

- 1.1 1. 1 In this document "**The Company**" means The Jekyll and Hyde Company BV, listed in the Dutch Trade Register under number 12037048 or a company affiliated to it; "**agreement**" refers to these General Sales Terms and Conditions, together with the relevant quotations or order confirmations issued or agreements concluded by The Company, in which the terms and conditions for the delivery of Goods and/or Services by The Company to the Client are included; "**Goods**" refers to, inter alia, the products, materials, spare parts, design, tools, equipment and all related documentation offered and provided by The Company; "**Services**" means the services and all related or resulting products, services and results to be delivered by The Company; and "**Customer**" refers to any person or legal entity entering into an agreement with The Company.

Article 2 Applicability

- 2.1 These terms and conditions apply to all offers and/or agreements which The Company makes to or enters into with a Client, as well as to the performance of the same.
- 2.2 These Sales Terms and Conditions shall apply to the exclusion of the general purchase conditions used by the Client. Deviating conditions or provisions shall only apply if and insofar as they have been expressly agreed in writing between The Company and the Client for each separate agreement.
- 2.3 The Client with whom an agreement has once been concluded to which these General Sales Terms and Conditions apply, agrees to the application of the General Sales Terms and Conditions to all further agreements, unless otherwise agreed in writing.

Article 3 Offers, orders and agreements

- 3.1 All offers of The Company are without obligation. Orders and acceptances of offers by the Client are irrevocable.

- 3.2 The Company shall only be obliged if it has confirmed the order in writing or has commenced performance.
- 3.3 Any inaccuracies in The Company's order confirmation must be notified to The Company in writing within 24 hours of the date of the order confirmation, otherwise the order confirmation is deemed to accurately and completely reflect the agreement and the Client is bound by it.
- 3.4 Changes to an order (other than correction of inaccuracies in the order confirmation) can be communicated the same day until 00.00 (GMT +1) free of charge. Thereafter, the order will be put into production and the Client shall owe an amount of EUR 100 to The Company for modification of the order. Following delivery and to the extent that The Company arranges transport after sending an order, an amount of EUR 200 will be charged by The Company to the Client for returns (without any defects underlying the order).
- 3.5 Verbal promises or agreements by or with its personnel shall only be binding on The Company if it has confirmed this in writing.
- 3.6 The Company has the right, at its own discretion, to engage one or more third parties for the performance of the order.
- 3.7 These general terms and conditions shall fully apply to any amendments to the agreement.

Article 4 Data

- 4.1 The Client guarantees the correctness, completeness and reliability of the data and information provided by it or on its behalf to The Company. The Company is not obliged to verify the correctness, completeness or reliability of this data and information provided to it.
- 4.2 The Company will only be obliged to perform or further fulfil the order if the Client has provided all data and information required by The Company.
- 4.3 If data necessary for the performance of the agreement is not available to The Company, or is not available on time or in accordance with the agreements made, or if the Client fails to fulfil its obligations in any other way, The Company shall also be entitled to charge the costs incurred as a result in accordance with its usual rates.
- 4.4 If and as far as The Company suffers direct or indirect damage due to the fact that the data and/or information provided by the Client is incorrect and/or incomplete, the Client shall be obliged to compensate The Company in full for such damage.

Article 5 Conformity

- 5.1 The Company makes all declarations of quantities, quality, performance and/or other properties relating to its Goods and Services with the greatest possible care. However, The Company cannot guarantee that there will be no deviations in this respect. Upon acceptance of the Goods or delivery of the Services, the Client must check that the Goods and Services conform to the quantities, quality, performance and/or other properties stated by or agreed with The Company.
- 5.2 Illustrations, descriptions, catalogues, brochures, advertising material, price lists and information and offers displayed on the website are not binding on The Company.
- 5.3 Minor deviations in colour, purity and quality shall in no event be grounds for any complaint, refusal to accept delivery or dissolution of the agreement or delay in payment of the price.
- 5.4 All technical requirements set by the Client for the Goods to be delivered, which deviate from the normal requirements, must be explicitly reported by the Client when concluding the agreement.
- 5.5 If The Company has shown or provided a model, sample and/or example, this is presumed to have been

shown or provided as an indication only: the qualities of the Goods to be delivered may deviate from the sample, model and/or example, unless The Company has explicitly stated that delivery would be in accordance with the sample, model and/or example shown or provided.

- 5.6 The Client is obliged to carefully examine the samples, models and/or examples received from The Company, whether or not at The Company's request, for errors and defects and to return them corrected or approved to The Company without delay.
- 5.7 Samples, models or examples which have been approved by the Client shall be binding for the performance of the order and shall serve as confirmation that the work preceding the samples, models or examples has been carried out properly and correctly. Products manufactured and work carried out in accordance with approved samples, models and/or examples cannot therefore constitute grounds for complaint.
- 5.8 The Client must ensure that the Goods and Services to be ordered and/or ordered by it comply with all government regulations in the country of destination and are generally suitable for the use intended by the Client. The use of the Goods and Services as well as the conformity with the government regulations is at the risk of the Client.
- 5.9 The Client guarantees that it will only use the Goods and Services purchased from The Company for the purpose for which The Company has sold the Goods and to do so with due observance of and in accordance with the laws and regulations applicable to the Client and its activities.
- 5.10 The Company complies with all applicable European, US, United Nations and national export restrictions, prohibiting the sale of certain products and/or services to certain countries, companies and/or persons. Compliance with these export restrictions can never constitute a breach of contract on the part of The Company.
- 5.11 If The Client resells Goods and/or Services in any way, The Client shall undertake to strictly comply with all export restrictions referred to in Article 5.10 in respect of such resells.

Article 6 Intellectual property

- 6.1 All copyrights, design rights, trademark rights, patent rights, semiconductor rights, portrait rights, rights to non-original writings, domain name rights, trade secrets and other (semi)intellectual property rights ("Intellectual Property") relating to Goods and Services supplied, the design, preparatory material and the names thereof, and in respect of everything The Company develops, designs, manufactures or provides, belong to and are vested exclusively in The Company or its supplier. More specifically, The Company is the sole owner and holder of the copyright that may arise on the works produced by it in the performance of the agreement, even if the work in question is mentioned as a separate item in the offer or on the invoice.
- 6.2 With regard to the Intellectual Property, the Client will only receive a non-exclusive, non-transferable, non-pledgeable and non-sub-licensable right of use, limited to what is necessary to use the Goods and obtain the result of the Services for the agreed purpose. Unless otherwise agreed in writing, the Client is not permitted to reproduce, convert or otherwise process content, materials or parts of Goods or Services.
- 6.3 Inasmuch as Intellectual Property can be obtained by filing or registration, only The Company is authorised to do so.
- 6.4 In the event of a dispute between The Company and the Client regarding Intellectual Property, The Company shall be presumed to be the rightful claimant, subject to evidence to the contrary from the Client.
- 6.5 The goods to be delivered or supplied by The Company in accordance with its design, or a substantial

part thereof, may not be reproduced in the context of any production process without The Company's written permission, even if or to the extent that they are not protected by copyright or other legal protection.

- 6.6 The Company is not obliged to store the items referred to in the first paragraph of this article for the Client. If The Company and the Client agree that these items will be stored by The Company, this will take place for a maximum period of 1 year and without The Company guaranteeing their suitability for repeated use.

Article 7 Prices

- 7.1 Prices quoted by The Company or agreed with The Company for all deliveries within and outside Europe are Ex Works (Incoterms 2020) and exclusive of VAT and other government-imposed levies, including import duties by any description, but including packaging costs, unless agreed otherwise explicitly in writing.
- 7.2 If The Company assumes additional Services without an explicit price being set in the agreement or it concerns an order within a scope set by The Company, The Company is entitled to charge a reasonable fee for such services.
- 7.3 If after the offer and/or the conclusion of an agreement currency changes take place as a result of which agreed prices in euros are higher, The Company is entitled to pass on this increase to the Client and consequently there will be no reason to adjust the prices in another currency.
- 7.4 If an assignment is to be carried out according to the Client's design, drawing or other instructions, The Company shall be entitled to charge the Client a separate price for this.

Article 8 Delivery time and delivery

- 8.1 The delivery times quoted by and agreed with The Company are estimates and are not to be regarded as deadlines. Exceeding the delivery time does not oblige The Company to pay damages and does not give the Client the right not to fulfil or suspend its obligations arising from the agreement. However, the Client shall be entitled to dissolve the agreement if and in so far as The Company has not yet carried out the order within a reasonable term set by the Client. In that case, The Company shall not owe any compensation.
- 8.2 The delivery time is based on the working conditions applicable at the time of the conclusion of the agreement and on the timely delivery of the goods and/or services required by The Company for the performance of the agreement. If a delay occurs as a result of a change in working conditions and/or the late delivery of goods and/or services required by The Company, the delivery time will be extended to the extent necessary.
- 8.3 The delivery time will be extended by the duration of the delay arising on the part of The Company as a result of the Client's non-compliance with any obligation arising from the agreement or the request for collaboration with regard to the performance of the agreement.
- 8.4 The Company delivers the Goods within and outside Europe DPU (Incoterms 2020). Within Europe the shipping costs are at the expense of The Company, outside Europe the shipping costs are at the expense of the Client.
- 8.5 The Company is authorised to execute an agreement in parts and to claim payment of the part of the agreement that has been executed.

Article 9 Force majeure

- 9.1 If The Company is prevented from fulfilling the agreement due to force majeure, it is entitled to suspend the performance of the agreement. In that case, the Client is not entitled to compensation for damages, costs or interest.
- 9.2 Force majeure shall be understood to include: extreme weather conditions, fire, flooding, accident, illness or strike of personnel, business interruption, stagnation in transport, power failure, cyberterrorism or other types of cyber attacks, epidemic or pandemic, security incidents, either intentional or unintentional corruption or loss of data, disruptive legal provisions, export restrictions, problems unforeseen by The Company in the production or transport of the Goods, the late delivery of goods or services by third parties engaged by The Company and other circumstances not within the control of The Company.
- 9.3 In the event of a situation of force majeure, The Company shall be authorised to dissolve the agreement for the non-feasible part by means of a written statement. If the force majeure situation lasts longer than 6 weeks, The Client is also authorised to dissolve the agreement for the non-feasible part by means of a written statement.
- 9.4 If The Company has already partially fulfilled its obligations when the force majeure situation occurs or can only partially fulfil its obligations, it is entitled to separately invoice the part already delivered and/or the deliverable part and the Client is obliged to pay this invoice as if it were a separate agreement.

Article 10 Defects and complaints

- 10.1 The Company guarantees the soundness of the delivered Goods and Services in accordance with what the Customer may reasonably expect on the basis of the agreement and the general product specification. If defects should occur in the Goods or Services delivered by The Company, The Company will repair these defects (or have them repaired), apply a reasonable price reduction, or redeliver the Goods or Service concerned, all at the sole discretion of The Company.
- 10.2 Any special warranties are expressly given by The Company in separate documentation under the conditions described in this separate documentation. If no special warranty has been agreed, a warranty period of 4 years from the date of shipment applies to orders from 1 January 2020. For all orders before 1 January 2020, a warranty period of 2 years from the date of shipment applies. Surface treatments are covered by a limited warranty of 2 years from the date of shipment.
- 10.3 For both special and general warranties, the warranty does not cover defects occurring in or (partly) as a result of:
- normal wear and tear, improper use and/or tuning;
 - the use of non-original parts and/or settings of the engine on which the Goods are installed;
 - failure of (personnel of) the Client to comply with instructions or directions, or by means of use other than the normal anticipated use;
 - non-observance of The Company's mounting/assembly and/or cleaning instructions;
 - mounting the goods on a vehicle other than that for which the goods were ordered;
 - improper storage, maintenance or use by The Client;
 - work by third parties, assembly/installation or repair by third parties or by the Client, without prior written permission from The Company;
 - the application of any government regulation concerning the nature or quality of materials used;
 - designs, drawings or other instructions of the Client, produced and delivered custom-made Goods;
 - goods provided by the Client to The Company for the processing or performance of an order or

- used in consultation with the Client;
 - parts purchased by The Company from third parties, to the extent that these third parties have not provided a guarantee to The Company;
 - the Client's processing of the Goods, unless The Company has expressly stated a certain manner of processing in its documentation, brochures, etc., or has permitted this in writing without any reservation;
 - vandalism, weather or other external causes.
- 10.4 Any possible treatment or processing of the Goods delivered by The Company is at the Client's own risk. The Client indemnifies The Company against any and all claims of third parties arising from any treatment or processing of the Goods delivered by The Company.
- 10.5 Minor deviations cannot be qualified as a defect and must be accepted by Client. Deviations which, taking all circumstances into account, in all reasonableness have no or a minor influence on the use value of the Goods, are always deemed to be minor deviations.
- 10.6 Any right to warranty or complaint shall lapse if the Goods have been transported, handled, used, processed or stored improperly or contrary to instructions given by or on behalf of The Company or if the Client has not complied with the customary measures/regulations, as well as if the Client fails to comply with any of its obligation towards The Company arising from the underlying agreement, or fails to do so properly or on time.
- 10.7 Replacement or repair of mechanical parts does not affect the current warranty period. The replaced or repaired mechanical parts are covered by the current warranty period and do not have their own or deviating warranty period.
- 10.8 The Client must carefully inspect the delivered Goods and Services immediately upon receipt (including the functionality and operation of the Goods), in default of which any right of complaint, replacement and/or guarantee will lapse. Any complaint regarding the quantity of Goods delivered and/or transport damage must be noted on the waybill or delivery note, in default of which the quantities stated on the waybill or delivery note will constitute compelling evidence against the Client.
- 10.9 The Client must report any complaints about Goods, Services and/or the performance of an agreement to The Company by registered letter within 5 days after the Client has discovered or reasonably should have discovered the defect. In the absence of a timely complaint, any claim against The Company shall lapse.
- 10.10 If the Client files a complaint, it is obliged to give The Company the opportunity to carry out an inspection and to establish the shortcoming. The Client is obliged to keep the Goods complained about at The Company's disposal, in default of which any right to performance, repair, dissolution and/or (damages) compensation shall lapse.
- 10.11 Goods sold, for any reason, may only be returned to The Company after prior written authorisation and shipping and/or other instructions from The Company. The Goods shall at all times remain at the expense and risk of the Client. The transport and all related costs shall be at the expense of the Client. The Company shall reimburse the transport costs if it is established that there is an attributable shortcoming on the part of The Company.
- 10.12 Any defects concerning part of the Goods delivered do not give the Client the right to reject or refuse the entire batch of Goods delivered.
- 10.13 The Client must inform The Company in writing of any inaccuracies in The Company's invoices within 5 days of the invoice date, otherwise the Client shall be deemed to have approved the invoice.
- 10.14 Complaints do not suspend the payment obligations of the Client.
- 10.15 After detection of a shortcoming in Goods or Services, the Client is obliged to do everything to prevent or limit damage, explicitly including any immediate cessation of use, processing and trading.

Article 11 Retention of title

- 11.1 The Company retains title of the Goods delivered and to be supplied until all its claims in respect of the Goods delivered and to be delivered have been paid in full by the Client.
- 11.2 If the Client fails to fulfil its obligations, The Company shall be entitled, at the expense of the Client, to recover the Goods belonging to it (or have them recovered) from the place where they are located. In this context, The Company shall be entitled to enter the Client's business premises.
- 11.3 The Client is not entitled to pledge the Goods that have not yet been paid for or to transfer their ownership. The Client is obliged to keep the Goods delivered under retention of title with due care and as recognisable property of The Company.

Article 12 Recommendation

- 12.1 The Company endeavours to the best of its ability to achieve the results intended with its recommendations and other information (including but not limited to calculations and drawings), but does not give any guarantee in this respect. All recommendations and other information provided by The Company are therefore entirely without obligation and are provided by The Company as non-binding information.
- 12.2 The recommendations and other information provided by The Company are exclusively intended for the Client. Third parties cannot derive any rights from them.
- 12.3 Subject to prior written consent of The Company, the Client is not permitted to disclose or otherwise make available to third parties the content of recommendations and other information provided by The Company.

Article 13 Payment

- 13.1 Unless otherwise agreed in writing, The Company's invoices must be paid within 14 days of the invoice date in the currency indicated on the invoice and exclusively in the manner indicated on the invoice.
- 13.2 The Company has the right to demand full or partial prepayment and/or otherwise obtain security for payment at all times.
- 13.3 The Company has the right to invoice partial deliveries separately.
- 13.4 The Client waives any right of suspension and set-off, nor does it have a right of retention on the Goods. The Company shall at all times be entitled to set off all that it owes the Client against all that the Client and/or the Client's affiliates owe The Company, whether or not due and payable.
- 13.5 If payment is not received on time, the Client shall, without further notice of default being required, owe interest on the invoice amount at a rate of 1% per month, calculated from the due date up to and including the date of payment, whereby part of a month shall be regarded as a whole month and without prejudice to The Company's right to claim its full damages.
- 13.6 All costs associated with collection shall be at the expense of the Client. The extrajudicial collection costs amount to at least 15% of the amount to be collected with a minimum of EUR 200.
- 13.7 The entire invoice amount is immediately due and payable in full in the event of late payment of an agreed instalment on the due date, as well as in the event that the Client becomes bankrupt, applies for (provisional) suspension of payments, the statutory debt rescheduling arrangement (WSNP) is declared applicable to the Client and/or if any attachment is levied on the Client. If one of the aforementioned situations arises, the Client is obliged to immediately inform The Company.
- 13.8 Payments made by the Client will always first be used to settle the costs owed, then to settle the interest owed and then to settle the due and payable invoices that have been outstanding the longest,

even if the Client states that the payment relates to a later invoice.

Article 14 Right of pledge and right of retention

- 14.1 The Company has a right of pledge and a right of retention on all goods and documents which The Company holds or will hold for any reason, for all claims it has or may have against the Client. The Company shall have a right of pledge and a right of retention in respect of any person requiring the delivery of the goods or documents.
- 14.2 The Company may also exercise the rights referred to in Article 14.1 in respect of any amounts owed by the Client to The Company in connection with previous and/or already completed orders.

Article 15 Liability and indemnity

- 15.1 Apart from the provisions of Article 10.1, the Client has no claim against The Company on account of defects in or relating to the Goods and/or Services provided by The Company. The Company is therefore not liable for direct and/or indirect damage, including property damage, immaterial damage, loss of income, stagnation damage, damage to reputation and any other consequential damage, caused by any factor, unless there is intent or wilful recklessness on the part of The Company.
- 15.2 Nor is The Company liable in the aforementioned terms for the actions of its employees or other persons falling within its sphere of risk, including (gross) negligence or intent on the part of these persons.
- 15.3 The Company shall not be liable for damage of any nature whatsoever arising as a result of or after the Client having handled or processed the Goods after delivery, having them processed or having them supplied to third parties.
- 15.4 The Company is not liable for any damage if delivery of Goods and/or Services is not possible due to export restrictions, embargoes etc.
- 15.5 The Company is not liable for advice or recommendations given to the Client unless this advice or these recommendations are explicitly part of a specific Service. In case of a specific Service, the limitations of liability, as included in this Article 16, apply. The Client indemnifies The Company against all claims of third parties in respect of recommendations or down payments made by The Company.
- 15.6 The Company is not liable for (the consequences of) deviations, errors and defects that went unnoticed in the samples, models or examples approved or corrected by the Client.
- 15.7 The Company is not liable for infringement of patents, licences and/or other intellectual property rights of third parties by the use of data provided by or on behalf of the Client. Nor shall The Company be liable for damage to or loss of raw materials, semi-finished products, models and/or other items made available by the Client.
- 15.8 The Client indemnifies The Company, its employees and its auxiliary persons engaged for the performance of the agreement against any claims by third parties, including claims based on product liability, in connection with the performance by The Company of the agreement, regardless of the cause, as well as against the resulting costs for The Company.
- 15.9 Damage to Goods caused by damage to or destruction of the packaging of the Goods shall be at the expense and risk of the Client.
- 15.10 In all cases in which The Company is obliged to pay damages, these will never exceed the invoice value of the Goods and/or Services delivered as a result of which or in connection with which damage is caused. Moreover, if the damage is covered by The Company's business liability insurance, the compensation shall never exceed the amount actually paid out by the insurer in the case concerned.
- 15.11 Any claim against The Company, unless acknowledged by The Company, shall lapse 12 months after the

claim arises.

- 15.12 The Client shall indemnify The Company, as well as employees of The Company, against claims by third parties (including administrative and/or criminal penalties), including employees of The Company, who, in connection with the performance of the agreement, suffer damage as a result of the Client's acts or omissions and/or the inaccuracy or incompleteness of data or information provided by or on behalf of the Client.

Article 16 The Company staff

- 16.1 Subject to The Company's prior written consent, the Client is not permitted to enter into an employment agreement with a person employed by The Company or a person who has been employed by The Company in a previous period of 12 months, or to have such person perform work for the Client in any other manner, insofar as such work is not performed on the basis of an agreement entered into with The Company.
- 16.2 The prohibition in this article applies from the date of conclusion of the first agreement between The Company and the Client and applies until after the expiry of 12 months after the performance of the last order to or agreement with the Client.
- 16.3 In the event of violation of the prohibition contained in this Article 16, the Client shall forfeit to a fine of EUR 10,000.00 for the benefit of The Company for each violation and of EUR 250.00 for each day that the violation continues, without prejudice to The Company's right to compensation for the damage caused by the violation and without prejudice to its right to demand compliance with this Agreement.

Article 17 Personal data protection

- 17.1 When collecting and (further) processing personal data in the context of the agreement of or on behalf of the Client, The Company will comply with its obligations arising from the General Data Protection Regulation (GDPR), the GDPR Implementation Act and, from the time of its effective date, the ePrivacy Regulation and related legislation and regulations and take appropriate protection measures.
- 17.2 If, in its opinion, The Company should be regarded as the processor within the meaning of the GDPR, the Client shall enter into and sign a written processing agreement with The Company, at The Company's first request, in addition to the provisions of this article, in accordance with the model to be supplied by The Company.
- 17.3 The Client indemnifies The Company against all claims by third parties (including in any case users and governmental bodies), financial government sanctions and costs (including costs of legal assistance) arising from a violation by the Client of any statutory regulation relating to the processing of personal data.

Article 18 Representation

- 18.1 If the Client acts on behalf of one or more third parties, and without prejudice to the liability of those third parties, it shall be liable to The Company as if it were the relevant Client.
- 18.2 If The Company enters into an agreement with two or more natural or legal persons, all clients shall at all times be jointly and severally liable to The Company for the whole.
- 18.3 If The Company concludes an agreement with a company being incorporated, the founders remain jointly and severally liable for the whole, even after the agreement has been ratified.

Article 19 Applicable law and competent court

- 19.1 The agreement(s) between The Company and the Client shall be governed by Dutch law.
- 19.2 The United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention 1980) does not apply to the agreement(s) between The Company and the Client and is expressly excluded.
- 19.3 The place of performance of all orders shall be deemed to be The Company's place of business.
- [19.4](#) All disputes between The Company and the Client shall be settled exclusively by the competent court of the District Court of Limburg, location Roermond, the Netherlands. Contrary to this provision, The Company is also and at all times entitled to submit a dispute or claim to the competent court at the place where the Client has its registered office or is established.

Article 20 Final provisions

- 20.1 The invalidity or voidability of any provision of these terms and conditions or of agreements to which these terms and conditions apply shall not affect the validity of the remaining provisions. The Company and the Client are obliged to replace provisions that are invalid or nullified with valid provisions with the same intention as the invalid or nullified provision as much as possible.
- 20.2 The Dutch text shall be decisive for the explanation and interpretation of these general terms and conditions.