



## GENERAL TERMS AND CONDITIONS

### LUXFORM GLOBAL B.V.

#### 1 DEFINITIONS

Unless the context requires a different interpretation, capitalised words and expressions in the Terms and Conditions are specified terms, as follows:

##### Agreement

Any Agreement between Parties concerning purchase or sale and supply of Products by Luxform to the Other Party;

##### Luxform

The private company Luxform Global B.V. (Dutch Chamber of Commerce (KvK) trade register number 17174349), with its statutory seat in Kampen, being the user of these Terms and Conditions;

##### Offer/Offers

Any offer from Luxform to enter into an Agreement;

##### Other Party

The natural person(s) or legal person(s) to whom Luxform makes an Offer and/or with whom Luxform enters into an Agreement.

##### Party/Parties

Luxform and the Other Party, or the individual parties;

##### Products

All material matters that are offered for sale or sold and delivered by Luxform.

##### Services

All (additional) services and/or (technical) operations, of any kind, carried out by Luxform, in the broadest sense;

##### Terms and Conditions

These Luxform's General Terms and Conditions;

#### 2 APPLICABILITY

2.1 These Terms and Conditions apply to all Offers and Agreements

2.2 If the Terms and Conditions have been applicable to any Agreement, these are automatically – without need for a separate agreement between the parties concerned – applicable to any further Agreements made between Parties, unless it has been expressly agreed upon otherwise in writing between Parties.

2.3 To any Agreement, the applicability of general or specific terms that the Other Party may use are expressly rejected by Luxform, unless the terms have in writing been expressly declared applicable to an Agreement by Luxform. Any such acceptance of applicability of terms of an Other Party to an Agreement shall under no circumstances lead to a tacit application to any Agreement entered into afterwards.

2.4 In case of nullity or nullification of one or more provisions of these Terms and Conditions by the Other Party shall not affect the validity of the remaining provisions. Parties shall enter into consultation with each other to replace any null or nullified provisions of these Terms and Conditions with provisions that are not null or void and which correspond as closely as possible with the purpose and purport of those null or nullified provisions.

2.5 When an Agreement deviates from one or more provisions in the Terms and Conditions, the provisions in the Agreement shall prevail. In any such case, the Terms and Conditions' remaining provisions shall unabatedly remain applicable to the Agreement.

#### 3 OFFERS

3.1 An Offer is without obligation and valid for the period stated in the Offer, unless expressly stated otherwise. If the Offer does not state a time limit for confirmation, the Offer expires in at least fourteen (14) days after the date stated in the Offer.

3.2 Any Offer that has been accepted by the Other Party within the time limit for confirmation, can be revoked by Luxform within five (5) days of receiving the confirmation. In any such case Luxform shall not be obliged to compensate the Other Party for any damage caused.

3.3 An order, originating from the Other Party, can be confirmed by Luxform through the means of an order confirmation. If the Other

Party does not raise any objections against this order within fourteen (14) days, the order will be accepted as described in the order confirmation.

3.4 If the Other Party provides Luxform with information, designs, etcetera, aimed at the submission of an Offer, Luxform may assume that these are correct and will base her offers on these. The Other Party shall indemnify Luxform against any against any third party claim consequential of the use of designs etcetera provided by or on behalf of the Other Party.

3.5 If an Offer is made at the request of the Other Party and this Offer is not accepted, Luxform is entitled to charge the Other Party all costs that were made to make the Offer.

#### 4 FORMATION OF AGREEMENTS

4.1 In compliance with the other provisions in the Terms and Conditions, an Agreement is only formed:

(a) through acceptance of an Offer by the Other Party;

(b) through a written order confirmation of an order issued (orally, or in writing) by the Other Party other than based on an Offer;

(c) since Luxform actually carries out an order of the Other Party.

4.2 The Agreement replaces and sets aside all any previous offers, correspondence, agreements or any other communications that have been made or taken place between Parties before entering into the Agreement, irrespective of how much they deviate from or conflict with the Agreement.

4.3 Amendments and/or supplements to the Agreement will apply only after acceptance by Luxform in writing. Luxform is not obliged to accept any amendments and/or supplements to an Agreement and is entitled to requiring that a separate Agreement is entered into. Luxform is authorised to charge the Other Party for any costs consequential of the amendments and/or supplements to the Agreement.

4.4 Promises by and arrangements with subordinates or representatives of Luxform shall only bind Luxform with respect to the Other Party if and insofar these promises and/or arrangements have been ratified or confirmed to the Other Party in writing.

#### 5 PRICES AND PAYMENT

5.1 All prices stated in an Offer or an Agreement are in Euros and are excluding packaging, transport and delivery costs (in the broadest sense), unless expressly stated otherwise, and also excluding turnover tax (VAT) or other government levies of any kind whatsoever.

5.2 If the Other Party places an order with Luxform without an explicit price being agreed, then the order will be fulfilled at the current price at the time, regardless of any earlier Offers or prices charged earlier.

5.3 Based on her assessment of the Other Party's solvency, Luxform is always authorised to request security or full or partial advance payment for the execution of due and non-due payment obligations. If and as long as the Other Party defaults the requested security or full or partial advance payment, Luxform is authorised to suspend her delivery obligation.

5.4 Payment must be made within thirty (30) days after the date of the invoice, unless agreed otherwise in writing. Payment shall be made by transfer into bank or giro accounts specified by Luxform. The moment in which Luxform receives confirmation from her bank of the payment concerned determines the moment of payment.

5.5 If the payment of an invoice has not been made within the stipulated period, the Other Party is in default by operation of law, without further notice of default being required, and from the date after the expiry date of the invoice, the Other Party owes Luxform an interest sum on the outstanding invoice of 2% per month (unless the statutory commercial interest rate is higher, in which case that interest shall apply), a part of a month being treated as a full month for the purpose of calculating interest. In addition, all extrajudicial collection costs shall be borne by the Other Party. The extrajudicial collection costs amount to at least 15% of the outstanding invoice, with a minimum of €150,-, without prejudice to the right of Luxform to claim the actual extrajudicial costs, should this be greater.

5.6 If the Other Party defaults paying any invoice as referred to in



article 5.5, all other outstanding invoices shall immediately become due and payable, without further notice of default being required.

5.7 Payments made by the Other Party shall be applied first to cover all costs owed and interest, respectively, and subsequently to cover all due invoices, oldest first, even if the Other Party states that the payment relates to an older invoice.

5.8 Without prejudice to mandatory legislative provisions, the Other Party is not authorised to suspend its payment obligations to Luxform and/or set off any payment obligations that Luxform may have to the Other Party against its payment obligations to Luxform.

5.9 Luxform is entitled to set off any receivables the Other Party owes her against any debt that Luxform may have to the Other Party or to (legal) persons affiliated with the Other Party.

5.10 All Luxform's outstanding claims to the Other Party will become immediately due and payable under the following circumstances:

(a) if after entering into the Agreement Luxform becomes aware of circumstances that give Luxform reasonable grounds to fear that the Other Party will not be able to meet its payment obligations, all this to Luxform's discretion.

(b) if, at entering into the Agreement, Luxform requested the Other Party security for the compliance as referred to in article 5.3 and this security is not provided or is inadequate.

(c) in event of the Other Party's liquidation, bankruptcy, application for bankruptcy, or suspension of payments, or – insofar the Other Party is a natural person – if the Natural Persons Debt Rescheduling Act (WSNP) is declared applicable to the Other Party.

## 6 PRICE CHANGE

6.1 If four (4) months have passed since the date on which the Agreement was entered into and its performance has not yet been completed by Luxform, an increase in price determinants (at Luxform's discretion) may be passed onto the Other Party. Payment of the price increase shall take place together with the principal or the last instalment.

6.2 If, however, the increased price that Luxform wishes to charge, as referred to in article 6.1, has increased by more than ten percent (10%) compared to the original price, the Other Party is entitled to cancel the Agreement within seven (7) days after notice of the price change, on the understanding that under no circumstances Luxform will be bound to compensate the Other Party for any consequential damages.

## 7 DELIVERY PERIOD

7.1 The delivery period specified by Luxform in the context of an Agreement is always an indication and shall therefore never be regarded as an absolute deadline, unless Parties have agreed otherwise in writing. Exceeding the delivery period that has been agreed upon shall under no circumstances lead to a right to compensation.

7.2 The delivery period specified by Luxform commences when agreement has been reached on all technical details, all necessary data etcetera are in the possession of Luxform, and all necessary conditions for execution of the Agreement have been fulfilled.

7.3 In fixing the delivery period, Luxform assumes that she can execute the order under the circumstances as they were at the time of entering into the Agreement.

7.4 If circumstances occur other than those known to Luxform at the time of entering into the Agreement, Luxform may extend the delivery period by the time necessary to execute the order under the changed circumstances. If, as a consequence, the work cannot be fitted into Luxform's planning schedule, it shall be completed as soon as Luxform's planning schedule allows this.

7.5 If there is a suspension of obligations by Luxform after breach by the Other Party, the delivery period shall be extended for the duration of the suspension. If, as a consequence, the work cannot be fitted into Luxform's planning schedule, it shall be completed as soon as Luxform's planning schedule allows this.

7.6 If the delivery period or the delivery period that has been extended in accordance with articles 7.4 and 7.5 of these Terms

and Conditions is exceeded, Luxform is in regard to Products only in default if she has received a notice of default from the Other Party, in which she is given a deadline for compliance of one (1) month and such compliance is not forthcoming within this period. In the event of dissolution, the Other Party is not entitled to compensation, unless exceeding the latter period was caused by wilful acts or gross negligence on behalf of Luxform's board and/or her executive subordinates.

## 8 TRANSPORTATION, RISK AND DELIVERY OF PRODUCTS

8.1 All risks of the products to be delivered to the Other Party shall pass to the Other Party ex works (as defined in the most recent version of ICC Incoterms), unless expressly agreed otherwise in the Agreement. All products are always transported at the risk of the Other Party. Unless, in a timely fashion, the Other Party requests Luxform to insure the Products during transportation at the expense of the Other Party, Products transported by or on behalf of Luxform will not be insured for transportation, unless otherwise specified in the Agreement.

8.2 Unless expressly agreed otherwise between Parties, import and export duties, clearance charges, taxes and all other government charges of any kind whatsoever corresponding with the transportation and delivery of Products by Luxform are at the account of the Other Party.

8.3 Luxform has fulfilled her obligation to deliver by placing the Products at the disposal of the Other Party in her warehouse or at a warehouse of a third party engaged by Luxform, at the agreed time. The delivery document, signed by or on behalf of the Other Party, and/or the carrier's corresponding attachments shall provide full proof of Luxform's delivery of the Products specified in the delivery document and/or corresponding attachments.

8.4 Luxform's placing the Products ordered at the disposal of the Other Party shall be considered equivalent to delivery of these Products. If the Other Party refuses to collect the Products placed at its disposal, Luxform will store the products concerned at a location of her choice for fifteen (15) business days after the delivery date. Upon that period expiring, Luxform shall no longer be required to keep the Products ordered by the Other Party at the disposal of the Other Party and is entitled to sell the Products to a third party or dispose of them as she wishes. The Other Party will nevertheless be required to comply with the Agreement by taking the Products concerned at the price agreed, at Luxform's first request. Meanwhile, the Other Party shall also be required to compensate Luxform for any damages consequential to a previous refusal to collect the Products concerned, including transportation and storage costs.

8.5 Luxform may use packaging for transportation of Products. The costs of the use of this packaging is at the account of the Other Party. The Other Party is entitled to reimbursement of that sum at the return of that packaging, on the condition that the packaging is in a good condition. At the moment Luxform receives the packaging in return, she will at her own discretion assess whether the condition of the packaging is sufficient to reimburse its value. If and insofar Luxform rejects the packaging, the Other Party shall receive notice of that within 30 days after the return. Insofar the Other Party has not objected against the rejection of the packaging within one week after receiving the notice, Luxform is free to destroy or dispose of the packaging.

8.6 The Other Party is entitled to exchange the packaging to be returned, as referred to in article 8.5, for new products' packaging, instead of receiving a payment. In that case, Luxform will not charge packaging costs for the new products. In case of an exchange, the same regulations concerning rejection, as referred to in article 8.5, apply.

## 9 RETENTION OF TITLE AND LIEN

9.1 All delivered Products remain the exclusive property of Luxform until the Other Party has fulfilled all obligations resulting from or related to (an) Agreement(s), including claims regarding fines, interest, and costs. Until that point in time, the Other Party is required to store the Products delivered by Luxform separate from other goods, clearly identified as property of Luxform, and properly insured and kept insured.

9.2 In case of delivery of Products to an Other Party in a territory other than the Netherlands, in regard to the Products concerned shall apply – if and as soon as they are in the territory of the country concerned – in addition to the retention of title under Dutch law, as referred to in article 9.1, also a retention of title, as referred



to in article 9.1, under the law of the country concerned, with the understanding that for the remainder of the Agreement Dutch law applies exclusively, as referred to in article 17.

9.3 As long as retention of title applies to delivered Products, the Other Party may not encumber or alienate these Products outside its normal course of business.

9.4 After Luxform has invoked her retention of title, she shall be entitled to repossess all delivered Products. The Other Party shall allow Luxform to enter the location where the products are.

9.5 If Luxform cannot invoke her retention of title because the Products have been mingled, deformed or acquired by accession, the Other Party shall be obliged to pledge or mortgage the newly formed goods to Luxform.

#### **10 TIME LIMIT FOR COMPLAINTS AND WARRANTY**

10.1 The Other Party is obliged to check the Products delivered by Luxform for visible defects immediately upon delivery. If there are visible defects, the Other Party shall notify Luxform thereof in writing and motivated within a period of eight (8) days after the delivery date. In the event of failure to do so, the Other Party will be deemed to have approved the delivery.

10.2 Luxform shall be notified in writing and motivated of any other defects to Products delivered or Services carried out within eight (8) days from the date on which the defect is detected or could have reasonably be expected to be detected. In the event of failure to do so, the Other Party will be deemed to have approved the delivery.

10.3 If Parties do not reach agreement about whether there is a defect, an independent expert will be consulted. The expert will be appointed by Luxform in consultation with the Other Party. The costs for consulting the expert will be on the account of the (substantially) unsuccessful party, unless agreed otherwise.

10.4 Complaints of any nature whatsoever about Luxform's execution of an Agreement do not suspend the Other Party's payment obligation and can be brought to Luxform's attention in writing exclusively.

10.5 Luxform is not subject to any obligation with regard to a submitted claim if the Other Party has not fulfilled all its obligations vis-à-vis Luxform (both financially and otherwise) completely and in time.

10.6 A claim concerning a Product delivered or a Service carried out by Luxform shall not have consequences for Products and/or Services delivered or carried out earlier, even if these Products and/or Services have been or will be delivered or carried out pursuant to the same Agreement.

10.7 Luxform provides the Other Party warranty coverage on all delivered Products for two (2) years after delivery, unless agreed otherwise. If the Other Party resells the Products to third Parties, it will be required to assign at least the same warranty provisions vis-à-vis its other party. Warranty is only granted to Products in their original condition.

#### **11 PERIOD OF LIMITATION**

11.1 The Other Party's legal proceedings and other powers vis-à-vis Luxform related to Products delivered and/or Services carried out, on any basis whatsoever, shall expire after twelve (12) months after the date on which the Other Party became aware or could have reasonably have been expected to become aware of the existence of these rights and powers, provided that before the expiry of this period Luxform has not been notified of a claim in writing.

11.2 In the event that the Other Party has notified Luxform of a claim related to Products delivered and or Services carried out, in writing, within the period as described in article 11.1, any legal proceedings in that regard shall also expire if no legal proceedings have been instituted against Luxform before a court having jurisdiction under article 17 of these Terms and Conditions, within a period of four (4) months after receiving the written claim concerned.

#### **12 TERMINATION**

12.1 Luxform is entitled to dissolve the Agreement in whole or in part – without incurring any liability for compensation vis-à-vis the other Party – if:

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Luxform has given the Other Party notice of default and has granted it a deadline of (at least) five (5) days if:

(a) The Other Party does not, not in time, or not properly comply with one of the obligations in the Agreement;

In all other cases without Luxform being obligated to give notice of default, including if:

(b) the Other Party is under judicial reorganisation or has made such a request;

(c) the Other Party has been declared bankrupt, or an application for bankruptcy is done against or by the Other Party;

(d) insofar the Other Party is a natural person – the Natural Persons Debt Rescheduling Act (WSNP) is declared applicable to the Other Party or such a request has been made;

(e) a third party issues account preservation order or a warrant of execution against the Other Party;

(f) the Other Party is a legal person and this legal person is dissolved, or, if the Other Party is a natural person, the Other Party dies or is no longer capable of operating their business;

(g) other circumstances occur that jeopardise Luxform's access to redress, such fully at Luxform's discretion.

12.2 If the Agreement is dissolved based on one or more of the grounds as mentioned above in article 12.1, Luxform is entitled to a compensation by the Other Party of financial loss suffered.

#### **13 LIABILITY AND COMPENSATION**

13.1 Luxform shall only be held liable for the Other Party's damages that are a direct result (that is: direct damage) of gross negligence or intent on the part of Luxform.

13.2 Under no circumstances Luxform will be held liable for:

(a) indirect damages such as – but not limited to – the Other Party's trading losses, consequential damages, or damages due to delay (including malfunction, loss of revenue, etc.), whatever the cause. If necessary, the Other Party shall properly insure itself against these damages.

(b) damage caused by any act or omission committed by the Other Party or third parties that is in conflict with the instructions given by Luxform or the Agreement and the Terms and Conditions;

(c) damage of any nature whatsoever caused by or occurring after the Other Party's putting the delivered object into use, customising or processing it, delivering it to third parties, or having had it put into use, having had it processed, or having had it delivered to third parties;

(d) damage caused by any act or omission committed by third parties, including auxiliary persons employed by Luxform.

13.3 If and insofar Luxform may be held liable for damages inflicted to the Other Party, Luxform's liability is under all circumstances limited to three times the invoice amount excluding VAT in respect of the Products delivered and/or the Services carried out to which Luxform's liability relates, with a maximum of three times the invoice value. A series of related damage events shall for the purposes of this article be considered as one event/incident.

13.4 The exclusions and or limitations of liability contained in articles 3.1 to 13.3 shall also apply to Luxform's staff and the auxiliary persons that Luxform has involved in the execution of an Agreement.

#### **14 FORCE MAJEURE**

14.1 Force majeure is understood to mean any failure to comply with the Agreement for which Luxform cannot be blamed.

14.2 Force majeure, as referred to in article 14.1, shall include – but not be limited to – a failure resulting from (a) issues with subcontractors and/or serious disruptions of subcontractors' production processes, including utilities, (b) non-delivery of necessary materials by third parties, (c) gross negligence or intent by auxiliary persons, (d) strikes, (e) excessive absenteeism of the staff, (f) fire, (g) exceptional weather events (e.g. floods), (h)



government measures (both on a national and an international level), including restrictions and prohibitions on import and export, (i) war, mobilisation, disturbances, revolt, state of emergency, (j) sabotage, (k) traffic congestions, (l) machine breakdown and/or (m) delay in transportation.

14.3 In the event of force majeure, Luxform has a choice either to suspend the execution of the Agreement until the situation of force majeure is over, or to fully or partially dissolve the Agreement, irrespective of whether Luxform had initially chosen for suspension. In either case the Other Party is not entitled to any compensation. If the period during which Luxform is not able to comply with the obligations is longer than thirty (30) days, the Other Party is also authorised to partly dissolve the Agreement, with the understanding that Luxform is authorised to send out an invoice for work already undertaken, in accordance with article 14.4. In the event of partial dissolution, there is no obligation to compensate for any consequential damages.

14.4 If Luxform has already partly fulfilled her obligations or can only partly fulfil her obligations when force majeure occurs, she is entitled to invoice that part separately, as if it concerned a separate Agreement.

#### **15 CONFIDENTIALITY**

15.1 Both Parties are obliged to keep secret all confidential information that they have obtained from each other or from another source by virtue of their Agreement. Information shall be considered as confidential if this is communicated by the Other Party, or if this results from the nature of the information.

15.2 If, by virtue of a statutory provision or a judgement of a court of law, Luxform is obliged to disclose confidential information to any third parties designated by the law or a competent court of law and Luxform cannot for that purpose invoke a right to privilege recognised or permitted by statute or by the court, Luxform shall not be required pay damages or compensation and the Other Party shall not be entitled to dissolve the Agreement.

#### **16 INTELLECTUAL PROPERTY RIGHTS**

16.1 Unless otherwise agreed in writing, Luxform shall retain the copyrights and all (intellectual property) rights in the offers made by her and in designs, illustrations, drawings, models, test models, software, etcetera, supplied by her.

16.2 The rights in the particulars referred to in article 16.1 shall remain in Luxform's possession, irrespective of whether costs have been charged to the Other Party for their production. Such data may not be copied, used or shown to third parties by the Other Party without Luxform's express consent.

16.3 To products to be supplied by Luxform can be added a tradename, brand, logo or other features that are protected by Luxform's (intellectual property) rights ("IPR"). With Luxform's sale of Products to the Other Party, a non-exclusive and non-transferable licence to the IPR, with the exclusive aim to use these when the Other Party resells the Products. This use shall be limited to a reference to the brand and the type of the Products to designate those Products; the IPR may not be used for other purposes, like advertising or promoting the Products, unless, beforehand, Luxform has in writing granted the Other Party permission to do so. The Other Party shall not be authorised, except with Luxform's written permission, to remove any marks on the Products, modify them or to affix their own marks to Products.

16.4 Luxform can terminate the license referred to in article 16.3 without being obligated to state the reasons and with immediate effect. After termination of the limited license the Other Party is not (any longer) allowed to use the IPR when it resells the Products. If the Other Party makes use or keeps making use of the IPR – in whatever form or manifestation – the Other Party shall be due to pay Luxform a fine of €1,000 per day for every day that the Other Party uses the IPR. Luxform reserves the right to claim, in addition to the fine, compensation for (consequential) damages suffered as a result of the Other Party's conduct.

16.5 The Other Party is not allowed to modify and/or change the IPR – e.g. brand and logo's – from the (packaging of) the Products or in any way make them illegible or affix their own marks to Products.

#### **17 APPLICABLE LAW AND COMPETENT COURTS**

17.1 Dutch law is exclusively applicable to all Offers made and

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Agreements entered into by Luxform. The applicability of the Vienna Sales Convention is expressly excluded.

17.2 All disputes between Parties shall be adjudicated exclusively by the Court of Overijssel located in Zwolle, The Netherlands.

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