

## General Terms and Conditions

### EVA Tech BV

#### CHAPTER 1: GENERAL

The provisions included in this chapter “General” apply to all agreements between EVA Tech and the counterparty.

#### **Article 1. Definitions**

- 1.1. In these terms and conditions, the following terms are used in the following meaning, unless explicitly stated otherwise or the context shows otherwise:
- a. EVA Tech: the user of these general terms and conditions: EVA Tech B.V. located at De Velde 1 in Zwartsluis (the Netherlands), registered with the Chamber of Commerce under the registration number 73781207;
  - b. counterparty: the legal person or natural person who has entered into an agreement with EVA Tech;
  - c. company: the counterparty being a legal person or a natural person who acts in the exercise of his/her profession or his/her company;
  - d. consumer: the counterparty being a natural person who does not act in the exercise of his/her profession or his/her business;
  - e. in writing: the manner of communication by letter, email, fax, or any other manner of communication that can be equated with this in view of the state of the art and the prevailing views in society;
  - f. agreement: the agreement between EVA Tech and the counterparty;
  - g. product: the product that EVA Tech supplies;
  - h. website: the websites <http://evatech.nl>, <http://evastream.nl>; <http://evaTech.nl>, <http://evaTech.com>, <http://evaTech.de> and <http://evaTech.fr> managed by EVA Tech and EVA Optic B.V. and where the counterparty can order products from EVA Tech.

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#### **Article 2. General**

- 2.1. These general terms and conditions apply to all offers, quotations from EVA Tech and to all agreements between EVA Tech and the counterparty.
- 2.2. Deviations from and additions to these general terms and conditions are only valid if they have been expressly agreed in writing in, for example, a (written) agreement or order confirmation from EVA Tech.
- 2.3. In the event that these general terms and conditions and the agreement or order confirmation contain mutually conflicting and/or different conditions, the conditions as included in the order confirmation of EVA Tech apply.
- 2.4. The applicability of the general (purchase) conditions of the counterparty is explicitly rejected by EVA Tech.
- 2.5. These general terms and conditions also apply to repeat orders or partial orders arising from the agreement.
- 2.6. If EVA Tech has already made these general terms and conditions available to the counterparty several times, this is a permanent trading relationship. EVA Tech then does not have to make the general terms and conditions available again in order to apply them to subsequent light calculations, quotations, and/or agreements.
- 2.7. If EVA Tech does not always require strict compliance with these general conditions, this does not mean that these general conditions do not apply. EVA Tech does not lose the right to demand strict compliance with the general terms and conditions in other cases.
- 2.8. If one or more provisions of these general terms and conditions are void or are nullified, the other provisions of these terms and conditions remain fully applicable. The void or nullified provisions will be replaced by EVA Tech, taking into account as much as possible the purpose and intent of the original provision(s).
- 2.9. If these general terms and conditions are drawn up in a language other than Dutch, the Dutch text will always take precedence in the interpretation and explanation of the provisions in the event of differences.

**Article 3. Offering and prices**

- 3.1. The EVA Tech range can be changed at any time.  
EVA Tech has the right to adjust its prices from time to time.

**Article 4. Additions and changes**

- 4.1. Additions or changes to the general terms and conditions or the agreement will only be binding for EVA Tech after they have been confirmed in writing by the counterparty.

**Article 5. Conditions of use of websites**

- 5.1. When using the website, the counterparty must act in accordance with what can be expected from a responsible and careful internet user.
- 5.2. It is not allowed to bypass or hack the security applications on the website.
- 5.3. It is not allowed to use the website in such a way that the correct functioning of computer systems of EVA Tech or third parties is affected or that other users of the website are hindered.

**Article 6. Execution of the agreement**

- 6.1. EVA Tech determines the manner in which and by which person(s) the agreement will be executed.
- 6.2. EVA Tech has the right, without informing the counterparty, to engage one or more third parties in the execution of the agreement.

**Article 7. Complaints and returns**

- 7.1. The company must check the order immediately upon receipt and report any defects and/or shortcomings in the delivered order to EVA Tech in writing, within 48 hours of receipt of the products.
- 7.2. Complaints regarding the invoice amount or the invoice amounts must be communicated to EVA Tech in writing, and include a motivation, within 14 days after the invoice date.
- 7.3. Ordered products are delivered in the (wholesale) packaging available from EVA Tech. Minor deviations accepted in the industry regarding specified sizes, weights, numbers, colours, flow rates, volumes, wattages, etc. are not considered a defect/shortcoming on the part of EVA Tech. It is not possible to invoke the warranty and complaints about this will not be processed.
- 7.4. The counterparty must enable EVA Tech to investigate the complaint and, in this context, provide EVA Tech with all information relevant to the complaint. Return shipments are at the expense and risk of the counterparty.
- 7.5. For a return shipment, the counterparty must request an RMA number from EVA Tech.
- 7.6. In all cases, returns are made in a manner to be determined by EVA Tech and in the original packaging, or packaging approved by EVA Tech.
- 7.7. No complaints are accepted with regard to imperfections in or properties of products made from natural materials, if these imperfections or properties are inherent to the nature of these materials.
- 7.8. No complaints are accepted with regard to discolouration and minor inconsistencies.
- 7.9. No complaints are possible with regard to products that have changed in nature and/or composition after receipt by the counterparty.
- 7.10. Complaints do not suspend the counterparty's payment obligation.

**Article 8. General warranty provisions**

- 8.1. EVA Tech has specific warranty provisions for certain products. With regard to the products to which such specific warranty provisions apply, those provisions should be taken as a starting point, and for subjects that are not included in the specific warranty provisions, the provisions of this article apply. If no specific provisions apply to products, the general warranty provisions from this article apply.
- 8.2. The warranties listed below only apply to the products supplied by EVA Tech. These warranty provisions therefore do not apply to advice or other activities provided by EVA Tech within the framework of the agreement.
- 8.3. If no specific warranty provisions have been agreed with a specific and explicit warranty period, a warranty period of 1 year applies, unless the counterparty has been informed via the website, or in any other way, that no warranty is provided on the product.
- 8.4. If the delivered product is not manufactured by EVA Tech, the warranty on the product is at all times limited to the manufacturer's warranty on the product.
- 8.5. EVA Tech's RMA procedure is used in all cases of defects within the warranty period.
- 8.6. The warranty period starts on the invoice date.

- 8.7. If the product shows a defect during the warranty period, the counterparty must inform EVA Tech as soon as possible within the warranty period. The counterparty must clearly describe the defect, so that EVA Tech can assess the warranty claim. Article 7.4 also applies when invoking the warranty.
- 8.8. The warranty claim will not be honoured if the counterparty has not acted in accordance with Articles 8.7 and 7.4.
- 8.9. If EVA Tech accepts the counterparty's warranty claim, EVA Tech will, at its discretion, repair the product at its factory, replace the product, supply a replacement part, or (partially) credit the price of the product. EVA Tech is therefore free to supply a comparable or equivalent product to the counterparty when the product is replaced.
- 8.10. If EVA Tech procures resources and/or materials for the manufacturing of the products from third parties, EVA Tech shall base its opinion in respect of the behaviours and qualities of these resources and/or materials on the information provided by the respective supplier(s).
- 8.11. The agreed warranty period will not be adjusted, extended, or renewed when EVA Tech has repaired or replaced the product.
- 8.12. EVA Tech can never be held liable for any damage that the counterparty suffers because an installation is temporarily not operational during the period that a product is defective, the warranty claim is being investigated, or a product is being replaced or repaired.
- 8.13. EVA Tech is not responsible or liable for the (checking of) fasteners and fastening materials of products (including supplied fasteners).
- 8.14. The warranty does not include the (re)installation/(dis)assembly of the product and/or the costs involved. EVA Tech's liability is at all times limited to what is included in Article 9.
- 8.15. Warranty work is carried out at the EVA Tech factory.
- 8.16. In exceptional cases, support can be provided on site, but only within the warranty period. The assessment for the need for on-site support rests solely with EVA Tech. If the counterparty rightly invokes the warranty and EVA Tech wants to take care of repair or replacement of the product on site, the counterparty undertakes to provide EVA Tech with the necessary cooperation, including – but not limited to – the possibility for EVA Tech to carry out repairs on location within office hours (from 8:00 am to 6:00 pm). The counterparty must ensure that all necessary equipment and machines are on site to safely access the products for analysis and, if necessary, to repair/replace them.
- 8.17. If one of the circumstances listed in Article 9.7 applies, the warranty claim will not be honoured.
- 8.18. An appeal to the warranty does not suspend the counterparty's payment obligation.

#### **Article 9. Liability**

- 9.1. EVA Tech cannot be held liable to compensate for any damage, which is a direct or indirect result of:
  - a. an event, which is in fact beyond its control and can therefore not be attributed to its actions, as described, among other things, in Article 10;
  - b. any act or omission of the counterparty, its subordinates, or other persons, who have been put to work by or on behalf of the counterparty.
- 9.2. The (lighting) colours that can be seen on the websites and in media and marketing materials of EVA Tech may differ from the colours that the product actually has, among other things due to differences in screen displays and printing materials used. EVA Tech is not liable for such colour deviations.
- 9.3. EVA Tech is not liable for mutilation or loss of data resulting from the transmission of the data using telecommunication facilities.
- 9.4. Any liability of EVA Tech for consequential damage, such as company damage, reputation damage, labour costs, imposed fines, loss of profit and/or loss suffered, delay damage and/or personal or injury damage, and/or indirect damage, such as – but not limited to – damage resulting from wrong advice from third parties, is expressly excluded.
- 9.5. The counterparty is obliged to take all measures that are necessary or can be deemed necessary to prevent or limit the damage. The counterparty must give EVA Tech the opportunity to rectify the damage.
- 9.6. The counterparty must appeal to EVA Tech no later than 2 months after it could have been aware of the damage suffered by it, or after it had become known.
- 9.7. The counterparty can neither invoke the warranty nor hold EVA Tech liable on other grounds if the damage has occurred:
  - a. Due to improper installation, assembly, and/or use contrary to the intended use or contrary to the (product) instructions, advice, instructions for use, data sheets, leaflets, etc. provided by or on behalf of EVA Tech;

- b. If application is outside of normal use. Normal use is understood to mean with products for permanent application underwater:
1. Minimum water temperature: 5°C
  2. Maximum water temperature: 32°C
  3. Maximum chlorine levels for water:
    - Indoor swimming pool – Free available chlorine (FAC):  $0.5 \leq \text{VBC} \leq 1.5 \text{ mg/l}$
    - Open air swimming pool  $\geq 20 \text{ m}^2$  – Free available chlorine (FAC):  $0.5 \leq \text{VBC} \leq 3.0 \text{ mg/l}$
    - Open air swimming pool  $< 20 \text{ m}^2$  – Free available chlorine (FAC):  $0.5 \leq \text{VBC} \leq 5.0 \text{ mg/L}$
    - All basins – Bound available chlorine:  $< 0.6 \text{ mg/l}$
  4. No application in saltwater or sea water
  5. The basin and the available accessories must be free of electrolysis
  6. Installation housing must be properly earthed to prevent electrolysis
  7. A continuous original EVA Tech cable must be used between turbine/machine/fixture/camera and the power supply

Normal use is understood to mean with products for application outside the water:

8. Maximum content of Trichloramine air: 0.50 mg/m<sup>3</sup> air (Target value: 0.20 mg/m<sup>3</sup> air)
9. Maximum content of Ozone air (if used): 120 µg/m<sup>3</sup> 1-hour value
10. Minimum ambient temperature: 0°C
11. Maximum ambient temperature: 32°C
12. Maximum relative humidity in swimming room: 60%
13. Minimum free space around control units and power supply (cabinet) for air circulation for cooling: 10 cm
14. Minimum free space at the front of the fixture/machine/camera and at the front of any heat sink for air circulation for cooling: 15 cm.

The counterparty is responsible for transferring the required burden of proof to EVA Tech so that it can be used to determine whether the requirements for normal use as further described in this article have been met.

- c. due to improper storage (storage) of the delivered products;
  - d. due to errors or omissions in the data provided by or on behalf of the counterparty to EVA Tech, or changes with regard to the information initially provided with regard to the application in accordance with the provisions of Articles 19 and 20 of these conditions;
  - e. due to failure in complying with local regulation, laws, and standards for both the products and fasteners;
  - f. due to not or insufficiently having independently checked the safety of the installation of which the products form part according to the locally applicable regulation, laws, standards, and advice of EVA Tech;
  - g. due to improper installation or (dis)assembly by the counterparty or the third parties engaged by it;
  - h. due to advice, directions, or instructions from or on behalf of the counterparty or third parties engaged by the counterparty;
  - i. because repairs or other work or operations have been carried out on the goods delivered by or on behalf of the counterparty, without the express prior permission of EVA Tech;
  - j. because the counterparty has not (only) used the original EVA Tech parts, cables, mounting materials, and accessories.
- 9.8. EVA Tech is not responsible or liable for the (checking of) mountings and mounting materials of products (including supplied mounting materials).
  - 9.9. The counterparty is responsible for the safety and control of products and mountings, and safety in general in accordance with the national laws, regulation, and standards.
  - 9.10. Warranty lapses in the event of malfunctions in installations as a result of which, for example, ambient temperatures or chlorine levels in the air fall outside the parameters of normal use.
  - 9.11. EVA Tech is never liable for the applicability and safety of its products in a specific environment or application. Responsibility and assessment of the application of a product in a certain environment or application lies with the counterparty.
  - 9.12. EVA Tech is never liable for the quality of, and mutual compatibility with, the installation in/to which the products are connected.

- 9.13. If EVA Tech is liable for damage suffered by the counterparty, EVA Tech's compensation obligation is at all times limited to a maximum of the amount that will be paid out by its insurer. In the event that the insurer of EVA Tech does not pay or if the damage is not covered by EVA Tech's insurance, the compensation obligation of EVA Tech is limited to a maximum of the invoice amount for the delivered products to which the liability relates.
- 9.14. In the cases listed in paragraph 7 of this article, the counterparty is fully liable for all damage resulting from them and expressly indemnifies EVA Tech against all third-party claims for compensation for this damage. The guarantee expires irrevocably in the cases referred to in paragraph 7.
- 9.15. The limitations of liability included in this article do not apply if the damage is due to intent and/or deliberate recklessness of EVA Tech or its management staff at management level, or if mandatory legal provisions oppose this. Only in these cases will EVA Tech indemnify the counterparty against any claims of third parties against the counterparty.

#### **Article 10. Force majeure**

- 10.1. Force majeure on the part of EVA Tech includes: war, riot, epidemics and pandemics, mobilisation, domestic and foreign disturbances, government measures, strikes within the organisation of EVA Tech and/or the counterparty or threats of circumstances of this kind, disruption of the exchange rates existing at the time of entering into the agreement, business disruptions due to fire, burglary, sabotage, natural phenomena as well as other similar weather conditions, roadblocks, accidents, transport difficulties, delivery problems, terrorism, theft, power failure, internet failure, e-mail failure, computer breach by a third party, and changes in laws or regulations.
- 10.2. Force majeure also means a non-attributable shortcoming on the part of an EVA Tech supplier or a third party engaged by EVA Tech.
- 10.3. EVA Tech also has the right to invoke force majeure if the circumstance that prevents (further) fulfilment occurs after EVA Tech should have fulfilled its obligation.
- 10.4. In case of force majeure, EVA Tech is entitled to terminate the agreement or to suspend the fulfilment of its obligations towards the counterparty for a reasonable period without being obliged to pay any compensation.

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#### **Article 11. Intellectual property rights**

- 11.1. The counterparty must at all times respect the intellectual property rights that are applicable to the products and accessories including software applications, as well as marketing materials and printed matter including the website and texts about and images of products.

#### **Article 12. Customer service**

- 12.1. For questions about the order, filing a complaint or invoking the warranty, the counterparty can contact EVA Tech customer service. EVA Tech customer service is available:
- a. by email: [support@evatech.com](mailto:support@evatech.com)
  - b. by phone: +31 (0)38 – 33 75 067
- 12.2. Complaints submitted to EVA Tech will be answered within a period of 14 days from the date of receipt. If a complaint requires a foreseeably longer processing time, EVA Tech will respond within the period of 14 days with a notice of receipt and an indication of when the counterparty can expect a more complete response.

#### **Article 13. Confidentiality**

- 13.1. Both parties are obliged to maintain the confidentiality of all information that they have obtained from each other or from another source in the context of their agreement. Information is considered confidential if this has been communicated by the counterparty or if this arises from the nature of the information. The party receiving confidential information will only use it for the purpose for which it was provided.
- 13.2. If, based on a legal provision or court ruling, EVA Tech is obliged to disclose confidential information to a third party appointed by law or a competent court, and EVA Tech cannot exercise its statutory or legally acknowledged or approved right to refuse to give evidence, EVA Tech will not be held liable to pay any compensation for damages or restitution of costs.

#### **Article 14. Applicable law and competent court**

- 14.1. Only Dutch law applies to the agreement concluded between EVA Tech and the counterparty. The applicability of the Vienna Sales Convention is excluded.

- 14.2. Any disputes will be settled by the competent court in the place where EVA Tech is established, although EVA Tech always retains the power to submit the dispute to the competent court in the place where the counterparty is located. The consumer has 1 month to consider whether to opt for settling the dispute before the competent court after EVA Tech has invoked this stipulation in writing vis-à-vis the consumer.

## **CHAPTER 2: COMPANIES**

The provisions included in chapter 2 “Companies” apply, without prejudice to the applicability of Chapter 1 of these general terms and conditions, if the counterparty is a company.

### **Article 15. Offers and quotations**

- 15.1. All offers and quotations from EVA Tech are without obligation, unless they contain a term for acceptance. If a quotation or offer contains a non-binding offer and if this offer is accepted by the company, EVA Tech has the right to withdraw the offer within two (2) working days after receipt of acceptance.
- 15.2. The prices stated in the offers, quotations, price lists, etc. are exclusive of VAT and any costs, such as transport costs, shipping costs, administration costs, and invoices from any third parties engaged.
- 15.3. A composite quotation does not oblige EVA Tech to deliver part of the offer included in this quotation at a corresponding part of the price.
- 15.4. If the offer is based on information provided by the company and if this information turns out to be incorrect or incomplete or if it changes afterwards, EVA Tech is entitled to adjust the prices and/or delivery periods stated in the offer.
- 15.5. Offers, quotations, and prices do not automatically apply to repeat orders.
- 15.6. EVA Tech cannot be held to its calculations and simulations, quotations, or offers if the company can reasonably understand that the calculations and simulations, quotations, or offers, or any part thereof, contains an obvious mistake or error.
- 15.7. Shown and/or provided samples and models, statements of colours, dimensions, weights, flow rates, volumes, wattage, and other descriptions in brochures, promotional material, and/or on the EVA Tech website are as accurate as possible, but are only indicative. The company cannot derive any rights from this.
- 15.8. The samples and models mentioned in the previous paragraph remain the property of EVA Tech and must be returned to EVA Tech at its first request, at the company’s expense.

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### **Article 16. Conclusion of the agreement**

- 16.1. The agreement is concluded after the company has logged in to the website and has successfully completed the ordering process via the website, or after the company has accepted the offer made by EVA Tech, even if this acceptance differs from the offer on minor points. However, if the acceptance of the company differs in essential respects from the offer, the agreement will only be concluded if EVA Tech has expressly agreed to these deviations in writing.
- 16.2. After the agreement has been concluded via the website, EVA Tech will send the company a confirmation by email. The agreement can only be concluded via the website after the company has confirmed that it agrees to these general terms and conditions during the ordering process.
- 16.3. If the company requests a project or places an order with EVA Tech without an earlier offer, EVA Tech is only bound by this order or project after confirming it to the company in writing.
- 16.4. EVA Tech is only bound by verbal agreements after it has confirmed these to the company in writing, or as soon as EVA Tech has started to implement these agreements without objection from the company.

### **Article 17. Account**

- 17.1. In order to place an order via the website, the company must log in to the website. The company can submit a request to EVA Tech to receive login details. EVA Tech is not obliged to honour such a request.
- 17.2. The company is responsible for its account on the website and login details at all times. The company must carefully keep record of its login details. EVA Tech cannot be held liable if unauthorised third parties use the login details of the company. If the company finds that an unauthorised third party is using its account, the company must notify EVA Tech as soon as possible.

**Article 18. Price increase**

- 18.1. If, as a result of laws and regulations, currency fluctuations, or price changes at third parties or suppliers engaged by EVA Tech, etc., (cost) price-increasing circumstances arise for EVA Tech between the date of the conclusion of the agreement and the performance thereof, EVA Tech is entitled to increase the agreed price accordingly and charge it to the company. The company will be notified of such a price change as soon as possible.

**Article 19. Provision of information from the counterparty**

- 19.1. The counterparty must ensure and undertake to:
- a. provide all the necessary and relevant information, in the opinion of EVA Tech, for the implementation of the agreement or adequate advice to EVA Tech in the manner desired by EVA Tech;
  - b. immediately inform EVA Tech about developments, facts, and/or circumstances that are relevant to EVA Tech within its organisation and that are or may be important in connection with the execution of the agreement or the advice to be given;
  - c. immediately inform EVA Tech about changes in the (desired) application of the product, the method of installation, the environmental factors, etc., if the company knew or should reasonably have known that these changes would affect the agreement or the advice to be given;
  - d. examples include: dimensions and location of mounting, any data carriers, electronic files, etc. provided by the company to EVA Tech are free of viruses and/or defects.
- 19.2. The provision in paragraph 1 (under a) means that, prior to the agreement or the requested advice, the company has an obligation to inform EVA Tech about the (desired) application of the product, the method of installation, the environmental factors, etc.
- 19.3. The provisions in paragraph 1 (under b and c) mean that the company has an obligation not only to EVA Tech prior to the agreement or the requested advice, but that it also has an obligation to keep EVA Tech actively informed at all times of all relevant developments and changes, which the company knows or ought to know to affect the agreement or the requested advice. This includes mounting method, installation conditions, material use.
- 19.4. The company ensures and guarantees that the information it provides is correct, complete, and reliable, even if it comes from third parties, and it indemnifies EVA Tech against claims from third parties that arise from incorrect and/or incomplete data.
- 19.5. If the obligations referred to in this article are not met in time, EVA Tech is entitled to suspend the execution of the agreement or the advice until the company has fulfilled its obligations. The costs related to the delay and other consequences resulting from this are at the expense and risk of the company.
- 19.6. The company is responsible for assessing whether a product is suitable for the application and environment for which it is used. This means that testing with product regulations (found in EVA product data sheets) and normal use (see warranty terms) must be done by the company. EVA Tech is not responsible for indicating whether or not a product is suitable for the application of the company.

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**Article 20. Company obligations**

- 20.1. All products supplied by EVA Tech may only be resold by the company in the original packaging from EVA Tech or its supplier. The company should not make any changes to the original packaging and should avoid damage.
- 20.2. The company undertakes to install or assemble, use, and maintain the delivered products in accordance with the enclosed manuals. If this article is not complied with, the warranty will lapse.
- 20.3. The company must report modifications or changes in the installation or assembly, use, or maintenance to EVA Tech within 24 hours, if the company knew or should reasonably have known that these modifications or changes affect the advice or the products of EVA Tech.
- 20.4. If the company does not fulfil its obligations and if EVA Tech fails to demand fulfilment from the company, this does not affect EVA Tech's right to still demand fulfilment at a later date.
- 20.5. If the company does not, or not in a timely manner, or not fully, fulfil its obligations towards EVA Tech or those that arise from the law, or if the company acts unlawfully towards EVA Tech, then the company is liable for all damage that EVA Tech suffers as a result. Additionally, EVA Tech is entitled to suspend the execution of the agreement.

**Article 21. Delivery and terms of delivery**

- 21.1. All shipments are shipped under Incoterms EXW (Ex Works/Ex-Factory). This means that the company is responsible for payment of all shipping costs, such as, but not limited to, shipping, insurance, customs clearance, customs fees, taxes, and charges.
- 21.2. The company can collect the order from EVA Tech, or EVA Tech arranges the transport of the order on behalf of the company and at the expense and risk of the company.
- 21.3. If the company collects the order from EVA Tech, EVA Tech will inform the company when the order is ready.
- 21.4. If the order is sent to the company on the instructions of the company, the shipment will be sent to the specified address after receipt of payment, in accordance with the agreed delivery time.
- 21.5. Agreed delivery times can never be regarded as firm deadlines. If EVA Tech fails to fulfil its delivery obligations under the agreement or if it fails to do so in time, it must be given written notice of default by the company, whereby it will still be given a reasonable period to fulfil its delivery obligations.
- 21.6. EVA Tech is entitled to make partial deliveries, and EVA Tech can invoice each partial delivery separately.
- 21.7. The risk concerning the delivered products passes to the company at the time of delivery. In these general terms and conditions, the time of delivery is understood to mean: the moment when the products to be delivered leave EVA Tech's premises, warehouse, or store, or the moment when EVA Tech has informed the company that these products can be collected.
- 21.8. Shipping or transport of the ordered products takes place in a manner to be determined by EVA Tech, but at the expense and risk of the company. EVA Tech is not liable for any damage, of whatever nature – whether to the products themselves or not – that is related to shipping or transport.
- 21.9. If, due to a cause that lies within the company's sphere of risk, it proves impossible to deliver the products (in the agreed manner) to the company, or if the products are not collected, EVA Tech is entitled to store the products at the expense and risk of the company. Unless EVA Tech has explicitly established a different period in writing, the company must enable EVA Tech to deliver the products within 1 month after notification of the storage, or the company must still collect the products within this period.
- 21.10. If the company fails to meet its purchase obligation after the period referred to in paragraph 9 of this article, it is immediately in default. EVA Tech then has the right to dissolve the agreement in full or in part with immediate effect, without judicial intervention, by means of a written statement, and it has the right to sell the products to third parties. EVA Tech will hereby not be obliged to compensate for damages, costs, and interest.
- 21.11. The foregoing does not affect the company's obligation to reimburse any (storage) costs, damage caused by delays, transport costs, loss of profit, or other damage.
- 21.12. EVA Tech cannot be obliged to start delivering the products until it has received all necessary information and any agreed (advance) payment from the company. If this causes a delay, the delivery times will be extended proportionally.

**Article 22. Complaints**

- 22.1. The company must check the order immediately upon receipt and report any defects and/or shortcomings in the delivered order to EVA Tech in writing within 48 hours of receipt of the products.

**Article 23. Packaging**

- 23.1. If the products are delivered by EVA Tech in packaging that is intended to be used several times, the packaging remains the property of EVA Tech. This packaging may not be used by the company for other purposes than for which it is intended.
- 23.2. EVA Tech is entitled to charge a fee to the company for this packaging. If the packaging is returned carriage paid by the company within the agreed period, EVA Tech is obliged to take back this packaging and EVA Tech will refund the fee charged to the company.
- 23.3. If packaging is damaged, incomplete or lost, the company is liable for this damage and its right to reimbursement of the compensation lapses.
- 23.4. If the damage referred to in paragraph 3 of this article is higher than the fee charged, EVA Tech is entitled not to take back the packaging. EVA Tech can then charge the packaging to the company at cost price, less the compensation paid by the company.

- 23.5. If packaging is intended to be used only once, EVA Tech does not have to take back the packaging and is entitled to leave this packaging with the company. Any costs for the removal of this packaging are then at the expense of the company.

#### **Article 24. Payment**

- 24.1. In principle, payment by the company is made under the condition of prepayment in Euro (EUR). Shipping takes place after receipt of payment. Different payment conditions are only possible after written or electronic permission from EVA Tech. EVA Tech reserves the right to change the payment conditions back to prepayment at any time. An invoice is considered correct if the company has not objected within this payment term.
- 24.2. If EVA Tech has given its approval, orders placed via the website can be delivered on account.
- 24.3. If no payment has been made in advance, payment of the invoice amount by the company must in any case be made within 30 days after the invoice date, in Euro (EUR), by means of a deposit to the credit of a bank account to be designated by EVA Tech.
- 24.4. EVA Tech is at all times entitled to require (partial) advance payment or any other security for payment from the company.
- 24.5. If an invoice has not been paid in full after the period referred to in paragraph 1 has expired, the company will owe EVA Tech default interest of 2% per month, to be calculated cumulatively on the principal sum. Parts of a month are counted as a full month.
- 24.6. If payment is still not forthcoming after a reminder by EVA Tech, EVA Tech is also entitled to charge extrajudicial collection costs to the company.
- 24.7. The extrajudicial collection costs referred to in paragraph 6 for claims with a principal amount of up to € 25,000.00 are:
- 15% of the amount of the principal sum over the first €2,500.00 of the claim;
  - 10% of the amount of the principal sum over the next €2,500.00 of the claim;
  - 5% of the amount of the principal sum over the next €5,000.00 of the claim;
  - 1% of the amount of the principal sum over the next €15,000.00 of the claim.
- The company will be charged at least €150.00 in extrajudicial collection costs.
- 24.8. If the principal amount exceeds €25,000.00, EVA Tech is entitled to charge the company for the first €25,000.00 of extrajudicial collection costs in accordance with paragraph 7 of this article and to charge the company for the additional extrajudicial collection costs in the amount of 10%.
- 24.9. For the calculation of the extrajudicial collection costs, EVA Tech is entitled after one year to increase the principal amount of the claim by the interest accrued cumulatively in that year, in accordance with paragraph 4 of this article.
- 24.10. If the company fails to pay in full, EVA Tech is entitled to dissolve the agreement without further notice or judicial intervention by means of a written statement, or to suspend its obligations under the agreement until payment has been made or until the company has provided proper security. EVA Tech also has the aforementioned suspension right if it has reasonable grounds to doubt the creditworthiness of the company before the company is in default with payment.
- 24.11. Payments made by the company will first be deducted by EVA Tech from all interest and costs due, and then from the due and payable invoices that have been outstanding the longest.
- 24.12. The company is not entitled to offset EVA Tech's claims against any counterclaims it has against EVA Tech. This also applies if the company applies for (provisional) suspension of payments or is declared bankrupt.

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#### **Article 25. Retention of title**

- 25.1. EVA Tech reserves the ownership of all products delivered and to be delivered under the agreement until the time when the company has fulfilled all its payment obligations towards EVA Tech.
- 25.2. The payment obligations referred to in paragraph 1 consist of the payment of the purchase price of the products delivered and still to be delivered, plus claims relating to work performed in connection with the delivery and claims due to the company's attributable failure to perform its obligations. This includes payment of damages, extrajudicial collection costs, interest, and any fines.
- 25.3. EVA Tech also reserves the ownership for the models, designs, samples, etc. provided, supplied, or delivered, so that the provisions of this article also apply to those products.
- 25.4. If it concerns the delivery of identical, non-customisable products, the batch of products belonging to the oldest invoices is always deemed to have been sold first. In any case, the retention of title always rests on all delivered products that are still in the company's stock, shop, and/or contents when the retention of title is invoked.

- 25.5. Products subject to retention of title may be resold by the company as part of normal business operations, provided that it has also stipulated retention of title in respect of its delivered products.
- 25.6. As long as the delivered products are subject to a retention of title, the company is not authorised to encumber these products in any way with a limited right or to bring them into the actual control of a financier.
- 25.7. The company is obliged to inform EVA Tech immediately in writing if third parties pretend to have ownership or other rights to the products subject to retention of title.
- 25.8. The company is obligated to carefully store the retained title products, carefully and as identifiable property of EVA Tech, until it has fulfilled all its payment obligations to EVA Tech.
- 25.9. The company must take out company insurance or household insurance so that the products that are delivered under retention of title are insured at all times and will provide EVA Tech with the insurance policy and the associated premium payment certificates at its first request.
- 25.10. If the company acts in violation of the provisions of this article or if EVA Tech invokes the retention of title, EVA Tech and its employees have the irrevocable right to enter the premises of the company and to take back the products delivered under retention of title. This is without prejudice to EVA Tech's right to compensation for damage, loss of profit and interest, and any fines, and the right to terminate the agreement without further notice of default, by means of a written statement.

#### **Article 26. Intellectual property rights**

- 26.1. The intellectual property rights to all advice and light calculations and simulations made by EVA Tech on behalf of the company are vested in EVA Tech.
- 26.2. EVA Tech is and remains the rightsholder of all intellectual property rights that apply to, arise from, are related to, and/or belong to the designs, products, software, and other work supplied or made available by EVA Tech in the context of the agreement within the meaning of the Copyright Act. The company must respect these intellectual property rights at all times.
- 26.3. The company warrants that all information it provides or provides to EVA Tech does not infringe the copyright or any other intellectual property rights of third parties. The company is liable for any damage that EVA Tech suffers from such infringements and indemnifies EVA Tech against claims from these third parties.
- 26.4. The company is expressly forbidden to provide, reproduce, disclose or exploit the following: the designs, models, samples, advice and other intellectual products of EVA Tech, in the broadest sense of the word. This list is not exhaustive.
- 26.5. The company is also prohibited from making the items referred to in paragraph 2 available to third parties other than for the purpose of obtaining an expert opinion on EVA Tech's products. In the case as described above, the company will impose its obligations under this article on third parties engaged by it.
- 26.6. In the event of a violation of the prohibition contained in paragraphs 4 or 5 or in the event of a violation of the intent of these provisions, the company will forfeit to EVA Tech an immediately and due and payable penalty without notice or notice of default of €50,000 (in words: fifty thousand euros) per violation. And, €5,000 (in words: five thousand euros) for each day that the violation continues, without EVA Tech being obliged to prove damages and without prejudice to EVA Tech's right to claim compensation, if and insofar as the damage is an amount that exceeds the fine.

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#### **Article 27. Dissolution**

- 27.1. Without prejudice to the provisions of the other articles of these general terms and conditions, EVA Tech is entitled to dissolve the agreement, without further notice of default and without judicial intervention, by means of a written statement to the company if the company:
  - a. is declared bankrupt or an application for bankruptcy has been filed
  - b. applies for a (provisional) suspension of payment;
  - c. is subject to an enforcement order;
  - d. is placed under guardianship or under administration;
  - e. otherwise loses the power of disposition or legal capacity with regard to its assets or parts thereof.
- 27.2. The company is at all times obliged to inform the bankruptcy trustee or administrator of the (content of the) agreement and these general terms and conditions.
- 27.3. Furthermore, EVA Tech is authorised to dissolve the agreement if circumstances arise that are of such a nature that fulfilment of the agreement is impossible or can no longer be required according to the standards of reasonableness and fairness, or if circumstances arise that are of such a nature that unaltered maintenance of the agreement cannot reasonably be expected.

- 27.4. If EVA Tech proceeds to suspension or dissolution, it is in no way obliged to compensate for damages and costs in any way.
- 27.5. If the agreement is dissolved, the claims of EVA Tech on the company are immediately due and payable. If EVA Tech suspends fulfilment of the obligations, it retains its rights under the law and the agreement.
- 27.6. EVA Tech always reserves the right to claim damages.

**Article 28. Cancellation and suspension**

- 28.1. If the company wishes to cancel the agreement prior to or during its implementation, it will owe EVA Tech compensation to be determined by EVA Tech. This compensation includes all costs already incurred by EVA Tech and any damages suffered as a result of the cancellation, including loss of profit. EVA Tech is entitled to fix the aforementioned damages and – at its discretion and depending on the deliveries already made – to charge 50% to 100% of the agreed price to the company.
- 28.2. In the event that EVA Tech, at the request of the company, makes an urgent effort for the company and the company wishes to cancel the agreement prior to or during its implementation, the company owes EVA Tech compensation. This compensation includes, in any case, the full agreed price and the damages suffered through cancellation, including the lost profit.
- 28.3. The company is liable to third parties for the consequences of the cancellation and will indemnify EVA Tech against claims from these third parties arising from this.
- 28.4. EVA Tech is entitled to offset all amounts already paid by the company against the compensation owed by the company.
- 28.5. In the event of suspension of the agreed deliveries at the request of the company, all costs incurred at that time are immediately due and payable, and EVA Tech is entitled to charge these to the company. EVA Tech is also entitled to charge all costs incurred or to be incurred to the company during the suspension period.
- 28.6. If the implementation of the agreement cannot be resumed after the agreed suspension period, EVA Tech is entitled to dissolve the agreement, without judicial intervention, by means of a written statement to the company. If the execution of the agreement is resumed after the agreed suspension period, the company is obliged to reimburse any of EVA Tech's costs resulting from this resumption.

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**Article 29. Company information**

- 29.1. EVA Tech will treat the information provided by the company confidentially and will only disclose information to third parties insofar as this is necessary for the execution of the agreement.
- 29.2. If and insofar as the company requests it, the documents made available to EVA Tech will be returned to the company, except in the event that EVA Tech has suspended the right to fulfil all its obligations.

**Article 30. Limitation**

- 30.1. Any rights of action and other powers of the company, in whatever respect towards EVA Tech, lapse, in any case after the expiration of 1 year from the moment when a circumstance arises in which the company can use these rights and/or powers towards EVA Tech.

**Article 31. Rental of tools and equipment**

- 31.1. For the conditions relative to the rental of tools or equipment to the company by EVA Tech, please refer to the document "Rental conditions for Tools and Equipment EVA Optic".