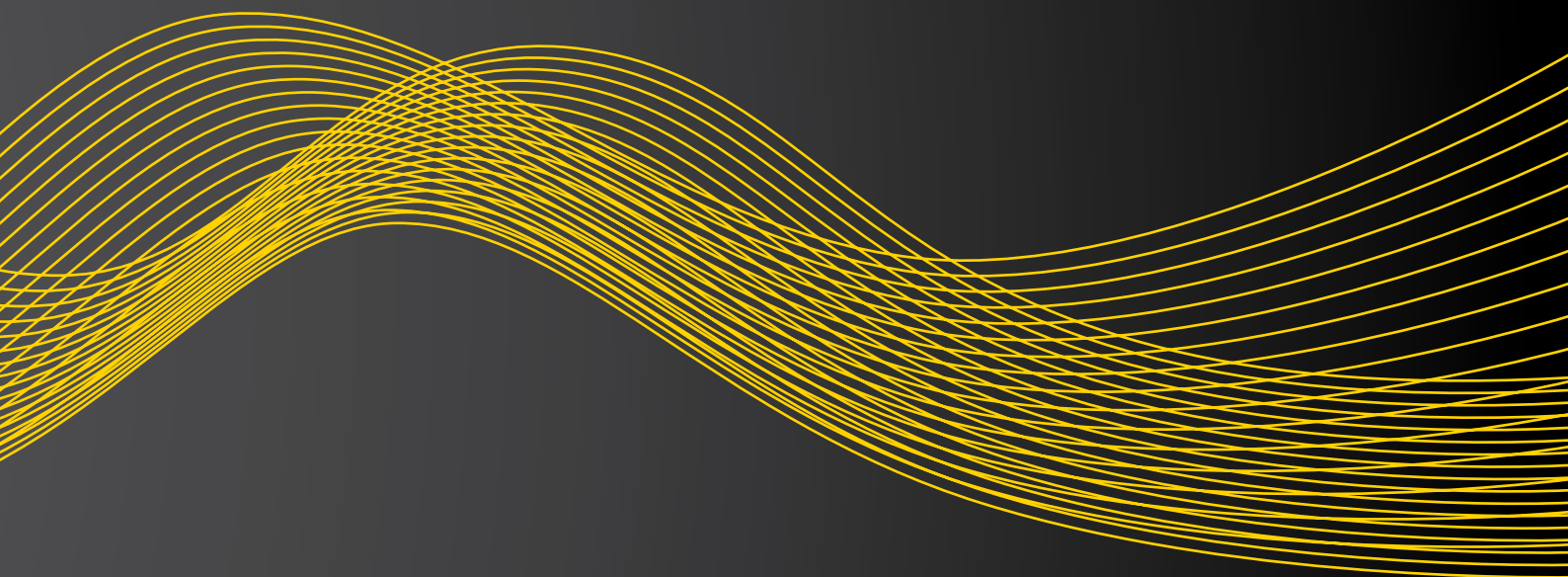


# **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**



## **1 Definitions**

- 1.1 In this document, "**Spirotech**" refers to Spirotech BV, Spiro Production BV, Spiro Innovation BV, SpiroPlus BV and/or an affiliated company; "**Agreement**" means these General Terms and Conditions of Sale and Delivery, together with the relevant order confirmation(s) provided by Spirotech stating the terms and conditions for the delivery of Products by Spirotech to the Customer; "**Product**" or "**Products**" means the products and solutions to prevent and remove air and dirt in or from heating, ventilation and/or air conditioning systems (HVAC) and process systems, liquid conditioning, other products, spare parts, and all related documentation to be provided by Spirotech; "**Services**" means the services (including but not limited to preventive and corrective maintenance, repair, advice, analyses, assembly and commissioning) and all products, services and results provided by Spirotech in connection with or resulting therefrom; and "**Customer**" means any person or legal entity entering into an agreement with Spirotech.

## **2 Applicability**

- 2.1 These Terms are applicable to all offers and/or agreements made or entered into by Spirotech with a Customer as well as the performance thereof.
- 2.2 These Terms are applicable to the exclusion of any general terms and conditions of purchase applied by the Customer. Any deviating terms or provisions will only apply if and in so far as these have been separately and expressly accepted by Spirotech for each individual Agreement.
- 2.3 The Customer with whom an agreement has been concluded to which these General Terms and Conditions of Sale and Delivery apply, agrees to the application of the General Terms and Conditions of Sale and Delivery to all further agreements, unless otherwise agreed in writing.

## **3 Offers, Orders and Agreements**

- 3.1 All offers made by Spirotech are non-binding, unless the binding nature is expressly declared in writing. An order constitutes an irrevocable offer to Spirotech to purchase a Product. All orders must be placed in writing and are subject to acceptance by Spirotech. Spirotech will confirm such acceptance to Customer by sending an order confirmation (the "**Order Confirmation**") for that part of the order accepted by Spirotech. The agreement between Spirotech and the Customer will only be concluded if Spirotech sends the Order Confirmation or commences the performance of the agreement. Spirotech reserves the right to reject an order or part thereof at all times.
- 3.2 Spirotech must be notified in writing of any inaccuracies in the Order Confirmation within two days of the date of the Order Confirmation, failing which the Order Confirmation will be considered to fully and accurately reflect the Agreement and the Customer will be bound to it.
- 3.3 Spirotech is not bound by any oral commitments made by or arrangements made with its staff or representatives until Spirotech has confirmed these in writing.
- 3.4 Spirotech may, at its own discretion, engage one or more third parties to perform the order.
- 3.5 Spirotech determines how and by which person(s) Services will be performed. With the exception of the provisions of Articles 7:404 and 7:407(2) of the Dutch Civil Code, each order will be deemed to have been solely placed with and accepted by Spirotech.
- 3.6 These Terms will apply in full to any amendments to the Agreement.

## **4 Information**

- 4.1 The Customer warrants the accuracy, completeness and reliability of all data and information provided by or on his behalf to Spirotech. Spirotech will not be obliged to investigate the accuracy, completeness or reliability of the information provided to Spirotech.
- 4.2 Spirotech will not be obliged to perform or continue to perform the order until the Customer has provided all data and information required by Spirotech.
- 4.3 If the information necessary for performing the Agreement is not provided, or not on time, or not in accordance with what is agreed in that respect, or if the Customer otherwise fails to fulfil its obligations, Spirotech reserves the right to charge the resulting costs to the Customer at its usual rates.
- 4.4 If and insofar as Spirotech suffers direct or indirect damage as a result of the data and/or information provided by the Customer being incorrect and/or incomplete, the Customer will be obliged to compensate Spirotech for that damage in full.

## **5 Conformity**

- 5.1 All specifications given by Spirotech concerning quantities, quality, performance and/or other characteristics with regard to its Products and Services are made with all possible care. However, Spirotech cannot guarantee that no deviations will occur in that respect. These specifications therefore apply by approximation and are non-binding. The Customer is required to verify that the quantities, quality, performance and/or other characteristics specified by or agreed with Spirotech are correct upon taking delivery of the Products or upon the provision of the Services.
- 5.2 Catalogues, price lists, prospectuses, advertisements, drawings, designs, images, photographs, prototypes, Product Information, including specifications of size, weight, price and/or delivery time, calculations, graphics and other information are provided by Spirotech without obligation and will not bind Spirotech. Spirotech makes no representations or warranties of any kind, express or implied, regarding the availability of the Products and/or the completeness, accuracy or reliability of the information, unless expressly stated in the Order Confirmation.
- 5.3 Minor deviations in quality may in no event be invoked to justify a complaint, refusal to take delivery, or cancellation of the Agreement, or delaying payment of the amount due.
- 5.4 All technical requirements imposed by the Customer on the Products to be delivered that deviate from the normal requirements must be expressly reported in writing by the Customer upon the conclusion of the Agreement.
- 5.5 If Spirotech has shown or provided a model, sample and/or example, this will be presumed to have only been shown or provided by way of indication: the characteristics of the Products to be delivered may deviate from the sample, model and/or example, unless Spirotech has explicitly stated that the deliverables will be in accordance with the sample, model and/or example shown or provided.
- 5.6 The Customer is obliged to carefully examine the samples, models and/or examples received by it, whether or not at Spirotech's request, for errors and defects and to return them to Spirotech with due speed after they are approved or corrected.
- 5.7 Samples, models or examples approved by the Customer are binding for performing the order and will serve as confirmation that the work preceding the samples, models and/or examples was performed properly and correctly. Products manufactured and work performed in accordance with approved samples, models and/or examples therefore cannot give rise to complaints.
- 5.8 The Customer must ascertain that the Products and Services to be ordered and/or already ordered by the Customer comply with all government regulations imposed in the country of destination and are generally suitable for the use envisaged by the Customer. The use of the Products and Services and the conformity with government regulations will be at the Client's risk.
- 5.9 The Customer warrants that it will use the Products and Services purchased from Spirotech only for the purpose for which Spirotech has sold the Products, with due observance of and in accordance with the laws and regulations applicable to the Customer and his activities. The Customer is obliged to provide all necessary cooperation, facilities and data for any inspection, investigation, or test to verify the Customer's compliance with this clause regarding his use of the Products and his compliance with the laws and regulations applicable to the Customer and his activities.
- 5.10 Spirotech 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 individuals. Compliance with these export restrictions can never lead to a breach of contract on the part of Spirotech.
- 5.11 If the Customer resells Products and/or Services in any way, the Customer undertakes to strictly comply with all export restrictions referred to in Article 5.10 in respect of such resale.
- 5.12 Spirotech has a whistle-blowing scheme in place to enable third parties to report serious and sensitive concerns regarding violations of business ethics.

## **6 Delivery**

- 6.1 The applicable Incoterms are decisive for the interpretation of the transport and delivery conditions used by Spirotech. Unless otherwise agreed in writing, delivery will take place ex works (the warehouse of Spirotech referred to in the Order Confirmation).
- 6.2 The Services will be provided by completion of the work by Spirotech and acceptance of the Services by the Customer signing a workslip.
- 6.3 Spirotech will endeavour to complete the order within thirty days of the date of the expected delivery date specified in the Order Confirmation. Delivery times are not to be considered strict deadlines.
- 6.4 The delivery times are based on the working conditions that apply when the Agreement is concluded and on the timely delivery of the goods and/or services required by Spirotech to perform the agreement. If a delay occurs due to a change in the working conditions and/or due to the non-timely delivery of goods and/or services required by Spirotech, the

delivery time may be adjusted accordingly.

- 6.5 If the Customer has not provided Spirotech with all relevant information to complete the order, Spirotech's performance of the agreement will be deemed to be suspended for as long as the Customer fails to provide Spirotech with such information and Spirotech may extend the period for completing the order accordingly.
- 6.6 If the ordered Product is not or no longer available, Spirotech will be entitled to deliver a replacement product of at least the same quality, at the same price.
- 6.7 Spirotech may perform the Agreement in parts. Spirotech may bill partial deliveries separately.
- 6.8 If the Customer does not take delivery of the Products, Spirotech may, at its sole discretion, store them at the Customer's expense and risk until they can be redelivered at the Customer's expense. In that event, Spirotech will have the option of either demanding performance of the Agreement or terminating the Agreement, without prejudice to its rights to damages due to losses suffered and lost profits, including storage costs.
- 6.9 Unless otherwise agreed in writing, Spirotech may terminate the Agreement in whole or in part or interrupt the performance thereof by giving notice to the Customer prior to its performance and/or prematurely at any time, in the event that the Customer fails to perform any of its obligations, or to do so in good time, or if Spirotech has good reasons to believe or suspect that the Customer will not perform one or more of its obligations or will not perform them in good time. In that case Spirotech will not be liable for any direct, indirect, special and/or consequential loss or any other loss or damage suffered by the Customer under or in connection with any termination or interruption of the Agreement (for whatever reason, including tort liability).

## **7 Prices**

- 7.1 Unless otherwise agreed in writing/expressly agreed, all prices quoted by or agreed with Spirotech will be Ex Works (incoterms 2020) and exclusive of VAT and other government levies, but including packaging costs.
- 7.2 If Spirotech undertakes to provide additional Services for which no price is expressly specified in the Agreement or if the order concerned is for a lower volume than determined by Spirotech, Spirotech will be entitled to charge a reasonable fee for this.
- 7.3 In the event that Spirotech or third parties engaged by Spirotech provide Services outside Spirotech's or the third party's office, Spirotech shall have the right to invoice travel expenses and other expenses separately.
- 7.4 If, following the offer and/or the conclusion of an Agreement, factors determining the cost price change, including taxes, excise duties, import duties, exchange rates, wages, prices of goods and/or services by Spirotech, whether or not from third parties, Spirotech will be entitled to adjust the prices accordingly. Such price changes will not affect any orders for which Spirotech has already sent an order confirmation.
- 7.5 Spirotech may at all times demand full or partial payment in advance or otherwise ask the Customer to provide adequate financial security (e.g. a bank guarantee or other collateral). If the Customer fails to provide such security within thirty days of Spirotech's request to do so, Spirotech may terminate the Agreement with immediate effect without being liable for any direct, indirect, special and/or consequential loss or damage suffered by the Customer under or in connection with such termination. The Customer will be obliged to reimburse Spirotech any costs incurred by Spirotech in the performance of the Agreement prior to such termination, including but not limited to costs of raw materials purchased by Spirotech and transport costs incurred by Spirotech.

## **8 Payment**

- 8.1 Unless agreed otherwise in writing, Spirotech's invoices are payable within 30 days of the invoice date, in the currency stated on the invoice and only in the manner indicated on the invoice.
- 8.2 Spirotech will be entitled to invoice partial deliveries separately.
- 8.3 The Customer waives any right to suspension and set-off and shall acquire no right of retention in respect of the Goods. Spirotech shall at all times be entitled to set off any amounts it owes to the Customer against that which the Customer owe to Spirotech, regardless whether these amounts are already due and payable.
- 8.4 In the event of late payment the Customer will, without any further notice of default, owe interest at 3.0 percent above the statutory interest rate applicable in the Netherlands, within the meaning of Article 6:119a and Article 6:120 (2) of the Dutch Civil Code, per month on the invoice amount, calculated from the due date, up to and including the date of payment and without prejudice to Spirotech's right to claim full damages.
- 8.5 All collection costs will be payable by the Customer. The extrajudicial collection costs will be at least 15% of the amount to be collected, subject to a minimum of EUR 250.
- 8.6 Spirotech has the right to terminate the agreement in whole or in part with immediate effect by sending a declaration as referred to in Article 23, without notice of default being required, if (i) the Customer fails to perform any of its contractual

obligations, or fails to do so properly or in time, (ii) the Customer is declared bankrupt, applies for a provisional or final suspension of payments (and, if the Customer is established in Belgium, the Customer has not confirmed within 10 days of Spirotech's request that it wishes to continue the agreement in whole or in part), or liquidates his business, or (iii) the Customer's property or part of it is attached. In these cases, all amounts the Customer owes Spirotech shall become immediately due and payable. The Customer is obliged to immediately inform Spirotech if any of the above-mentioned situations occur

- 8.7 Any payments made by the Customer will first be used to cover any outstanding costs; next to settle any interest due; and finally to pay the longest outstanding invoices, even if the Customer states that the payment relates to a later invoice.

## **9 Facilities**

- 9.1 The Customer must ensure that the location where the work is to be performed has the facilities that Spirotech and/or Spirotech's employees or third parties engaged by Spirotech may in reason demand and that these complies with the applicable safety requirements. The Customer shall inter alia ensure that Spirotech will have access to water, electricity and sanitary facilities. The Customer is not entitled to receive any compensation for providing these facilities.
- 9.2 The Customer warrants that all facilities it provides will comply with the requirements applicable to them at that time.
- 9.3 If work is to be performed at the Customer's location or at a location designated by the Customer, the Customer shall ensure that Spirotech's employees and any third parties engaged by Spirotech to perform the work have unimpeded free access to this site at the agreed time at all times. The Customer must inter alia ensure that Spirotech has sufficient opportunities to supply and remove materials in good time and free of charge.
- 9.4 If work is to be performed at the Customer's location or at a location designated by the Customer, the Customer shall ensure that it complies with the applicable legislation regarding working conditions and that Spirotech's employees and any third parties engaged by Spirotech are provided with the protective equipment necessary to safely provide the Services.
- 9.5 If Spirotech's goods or of those of third parties engaged by Spirotech are stored or kept at the Customer's location or at a location designated by the Customer for that purpose, the Customer must observe all due care and do and refrain from doing anything that may reasonably be expected of the Customer it in that respect. The Customer must ensure and warrant, among other things, that this location is sufficiently secured - and if necessary monitored - against wilful destruction, damage, theft, loss, etc. If the Customer does not adequately ensure this, Spirotech may, but will never be obliged, to take such measures itself. Compliance with this obligation will therefore always remain the responsibility of the Customer. If Spirotech proceeds to take such measures itself the resulting costs will be fully payable by the Customer. Any wilful destruction, damage, theft, loss, etc. will remain for the Customer's risk in that case as well.
- 9.6 In addition, the Customer must ensure that this/these location cannot and/or will not be entered by third parties not directly involved in the performance of the work, including children and/or animals.
- 9.7 The Customer must refrain from making any changes to the work performed by Spirotech or third parties, however named (including emergency and support structures).
- 9.8 If, as a result of non-compliance with the provisions of this Article, direct or indirect damage, howsoever named, is caused, this will be entirely at the expense and risk of the Customer, or at any event not at the expense and risk of Spirotech or the third parties involved by Spirotech in carrying out the work.

## **10 The Customer's Obligations**

- 10.1 The Customer must ensure that all permits, exemptions and other consents from government agencies or other third parties necessary for performing the agreement are obtained in good time.
- 10.2 The Customer is obliged to make the sites and the structures on them available to Spirotech in such a condition that Spirotech is able to provide the Services responsibly and that Spirotech's equipment and the persons deployed by or on behalf of Spirotech for these Services may be used responsibly. The areas beneath and around the work area must be empty and swept clean, and all dust and spider webs must be removed. All obstacles and loose materials must be removed as well.
- 10.3 The obligations referred to in Article 10.2 include at any event, but are not limited to, notifying Spirotech in advance in writing of the presence and location of any present obstacles, impediments and risks and clearly marking these.
- 10.4 If the Customer fails to comply with the obligations referred to in Articles 10.1, 10.2 and 10.3 at the time agreed between the parties, Spirotech will be entitled to suspend the performance of the work. In that case, any damage suffered by Spirotech as a result of this suspension, including loss due to delay, will be borne by the Customer. In that case, it will also depend on Spirotech's planning if the (repair) work can be performed.

- 10.5 Spirotech will in no event be liable if the aforementioned delay results in damage on the part of the Customer, regardless of the nature and extent of the damage.

## **11 Title and risk**

- 11.1 The Products are at the Customer's risk from the time of delivery.
- 11.2 Spirotech retains the title to the Products delivered and to be delivered until all its claims regarding the Products delivered and to be delivered have been paid in full by the Customer.
- 11.3 If the Customer fails to comply with its obligations, Spirotech will be entitled to recover or let others recover its Products from the site where they are located at the expense of the Customer. Spirotech will in that event be entitled to enter the Customer's business premises.
- 11.4 The Customer is not entitled to pledge or transfer title to Products that have not yet been paid. The Customer is obliged to keep any Products supplied subject to retention of title with due care and recognisable as Spirotech's property.
- 11.5 Spirotech will credit the Customer for such returned Products at the Product Price after deducting any costs incurred by Spirotech, provided that the Products taken back by Spirotech are undamaged.
- 11.6 The Customer will insure and keep insured all Products that have not or not fully been paid with a reputable insurance company against the risk of damage, including water damage, fire, explosion and theft. The Customer is obliged to provide proof of such insurance upon Spirotech's request and to keep Spirotech informed of any changes therein.

## **12 Spirotech's Property**

- 12.1 All models, parts, drawings, designs, calculations, images, photographs, prototypes, tools, data and data carriers, and other aids supplied by Spirotech to the Customer (the "**Materials**") are and will remain the property of Spirotech. The Customer must clearly mark such Materials as Spirotech's property. The Customer cannot exercise any right of retention in respect of these aids.
- 12.2 Unless otherwise agreed in writing, all intellectual property rights in respect of the Materials are and will remain vested in Spirotech, its affiliates and/or its licensors, even if the Customer has paid for such Materials.
- 12.3 The Customer may not use, copy, distribute or make the Materials available to a third party without Spirotech's prior written consent.
- 12.4 The Customer is obliged to return the Materials to Spirotech upon its first request.
- 12.5 The Customer may not pledge or otherwise encumber or lend goods that are the property of Spirotech, including the Materials, to entrust them to a third party's keeping or to otherwise place them at the disposal of a third party, without Spirotech's prior written consent.
- 12.6 The Customer must keep the Materials in a good condition and insure them and keep them insured with a reputable insurance company against the risk of damage, including water damage, fire, explosion, and theft. The Customer is obliged to provide proof of such insurance upon Spirotech's request and to keep Spirotech informed of any changes therein.
- 12.7 The Customer must immediately notify Spirotech of any (imminent) damage to or attachment of the Materials.

## **13 Intellectual property**

- 13.1 The Customer acknowledges that Spirotech and/or its affiliates is/are the owner of all patents, trademarks, trade names, logos, domain names and other intellectual and industrial property rights in respect of the Products and Services ("**Intellectual Property**") and acknowledges that, unless expressly agreed otherwise in writing, the Customer is not entitled to the same or the use thereof.
- 13.2 The Customer will not infringe any Intellectual Property.
- 13.3 The Customer is not permitted to change or remove any patent designations, copyright notices, trademarks, trade names or other intellectual property rights of or from any Product.

## **14 Advice**

- 14.1 Spirotech is committed to achieve the results envisaged with its advice and other information it provides (including but not limited to calculations and drawings) to the best of its ability, but does not provide any guarantee in this respect. All advice and other information provided by Spirotech are therefore entirely free of obligation and will be provided by Spirotech as non-binding information.
- 14.2 The advice and other information provided by Spirotech are solely intended for the Customer. Third parties cannot derive any rights from it.



- 14.3 The Customer may not disclose the content of Spirotech's advice and other information provided by Spirotech, or make it available to third parties in any other way, without Spirotech's prior written consent.

## **15 Non-disclosure**

- 15.1 The Customer undertakes to keep Spirotech's know-how, designs, drawings, prototypes, marketing plans, prices, information and other confidential business information of which it becomes aware strictly confidential ("**Confidential Information**"). The Customer will take all necessary precautions to ensure that the Confidential Information remains confidential. The Customer may not in any way disclose Confidential Information to any third party.
- 15.2 Confidential Information will not include information of which the Customer is able to demonstrate that: (a) it was already in its possession before it was disclosed by Spirotech; (b) it is in the public domain; (c) it has been lawfully obtained from a third party without breaching any confidentiality obligation vis-à-vis Spirotech; (d) it has been independently developed by the Customer without directly or indirectly using Confidential Information.

## **16 Warranty and Defects**

- 16.1 Spirotech warrants the soundness of the Products and Services supplied, in accordance with what the Customer may reasonably expect under the Agreement. Spirotech endeavours to achieve the objectives envisaged with the Services, but cannot guarantee that these objectives will be achieved. If any defects occur in the Products or Services provided by Spirotech these will, at the sole discretion of Spirotech, either be repaired by or on behalf of Spirotech, a reasonable price reduction will be offered, the relevant Product or Service will be redelivered, the Product will be replaced by a product that is at least functionally equal to the Product, or Spirotech will refund the purchase price in exchange of returning the Product. If a Product is returned and the purchase price refunded, the costs of returning the Product will be payable by the Customer or deducted from the amount credited by Spirotech. The returned Products will become the property of Spirotech. Spirotech may - at its discretion - decide to return such Products to the Customer after payment of the transport costs by the Customer.
- 16.2 The following warranty periods apply to the Products below, starting from the date of purchase of the Product by the Customer:
- a. brass products able to withstand temperatures up to 110 °C: the economic life of the first heating installation, with a maximum of 20 years;
  - b. brass products able to withstand temperatures in excess of 110 °C: 5 years;
  - c. steel products: 5 years;
  - d. vacuum degassers: 2 years;
  - e. expansion machines: 2 years;
  - f. expansion vessels ≤140 L: 5 years;
  - g. expansion vessels and vessels >140 L: 2 years;
  - h. chemical products: no warranty;
  - i. demineralisation products: 2 years;
  - i. accessories, spare parts, and repairs: 6 months.
- Unless expressly stated above, no warranties apply to other Products and Services.
- 16.3 The above warranty periods apply exclusively to Spirotech Standard Products and/or Spirotech Special Products. The above warranty periods do not apply to Spirotech Customised Products, for which the Order Confirmation will specify a specific warranty period, if applicable.
- 16.4 The following are not covered by any warranty: defects in Products designed and/or purchased by Spirotech in accordance with the Customer's requirements; defects in Products containing parts designed and/or purchased by Spirotech in accordance with the Customer's requirements; defects that occur due to or that are (also) the result of normal wear and tear; damage resulting from non-compliance with the user manuals or other guidelines published by Spirotech; maintenance (cleaning, changing spare parts) that is not in accordance with or as specified in the user manuals or other guidelines published by Spirotech; incorrect, careless or wrong use or use for a purpose for which the Products and/or Services are not intended; accidents, fire or any other external cause; repair or other work by third parties or by the Customer without Spirotech's prior written consent; installation and/or commissioning by a party that is not certified or approved by Spirotech or that is not a professional party. No warranty is extended if the Product is stolen or if a label or identification number is altered or removed from the Product. The warranty only applies only to new and unused Products purchased by the Customer from Spirotech. The warranty will in no event exceed the warranty granted to Spirotech by third parties in respect of Product Parts.

- 16.5 All claims under the warranty must be submitted to Spirotech in writing within 5 business days of the occurrence of a defect, accompanied by proof of purchase from the Customer and a serial number, if applicable. All claims that are not submitted to Spirotech in time in accordance with the above will lapse.
- 16.6 Any treatment or processing of a Product supplied by Spirotech is at the Customer's own risk. The Customer agrees to indemnify Spirotech against any and all third-party claims arising from any treatment or processing of Products supplied by Spirotech.
- 16.7 Minor deviations will not be considered defects and must be accepted by the Customer. Deviations that, all things considered, reasonably have no or only a minor impact on the usage value of the Products will always be deemed to be minor deviations.
- 16.8 Any right to warranty and any complaint will lapse if the Products and/or (the result of) the Services have been transported, handled, used, processed or stored by or on behalf of the Customer improperly or contrary to the instructions given by or on behalf of Spirotech, or if the usual measures/rules have not been observed, or if the Customer fails to perform any obligation towards Spirotech under the underlying Agreement, or to do so properly or in time.
- 16.9 The Customer is obliged to carefully inspect the Products and Services delivered immediately upon receipt, failing which any right to complain, replacement and/or warranty will lapse. Any complaints regarding the quantity of Products delivered must be recorded upon delivery on the consignment note or delivery note, failing which the quantities stated on the consignment note or delivery note will be considered conclusive proof against the Customer.
- 16.10 All complaints about Products, Services and/or the performance of an Agreement must be submitted in writing to Spirotech within 5 days after the Customer has discovered or should reasonably have discovered the defect. If the complaint is not submitted in time, the claim against Spirotech will have expired.
- 16.11 If the Customer submits a complaint, it will give Spirotech the opportunity to carry out an inspection and to establish the defect. The Customer is obliged to make Products that are complained about available to Spirotech, failing which any right to performance, repair, cancellation and/or compensation for damages will lapse.
- 16.12 Any defects relating to a part of the Products and/or Services delivered or provided do not give the Customer the right to reject or refuse the totality of the Products and/or Services delivered or provided.
- 16.13 Spirotech must be notified of any inaccuracies in invoices submitted by Spirotech within five (5) days of the invoice date, failing which the Customer will be presumed to have approved the invoice.
- 16.14 Complaints will not suspend the Customer's payment obligations.
- 16.15 If the Customers discovers a defect in a Product or Service, the Customer is obliged to do everything that will prevent or limit damage, which will explicitly include the immediate cessation of use, treatment, processing or trading thereof.

## **17 Liability and indemnification**

- 17.1 Apart from the provisions of Article 16.1., the Customer has no claim whatsoever against Spirotech for defects in or with regard to the Products and/or Services supplied by Spirotech. Spirotech will therefore not be liable for any direct and/or indirect damage, including property damage, immaterial damage, loss of income or loss of expected savings, stagnation damage, reputational damage or loss of goodwill, lost opportunities, waste of time of the managerial or other staff, and any other consequential loss, due to any cause whatsoever, except in the event of intent or deliberate recklessness on the part of Spirotech.
- 17.2 Spirotech will furthermore not be liable as referred to above, for the acts of its employees or other persons who fall within the scope of its risk, including in the event of intent or (gross) negligence on the part of these persons.
- 17.3 Spirotech will not be liable for any loss or damage, of any kind, caused by or after, following delivery, the Customer has modified or processed the Products, or delivered them to third parties, or has had them modified or processed, or has had them delivered to third parties.
- 17.4 Spirotech will not be liable for any loss or damage if it is not possible to deliver Products and/or Services as a result of export restrictions, embargoes, etc.
- 17.5 Spirotech will not be liable for any advice or recommendations it has given to the Customer.
- 17.6 The Customer agrees to indemnify Spirotech against any and all third-party claims in connection with advice given or recommendations made by Spirotech.
- 17.7 Spirotech will not be liable for any deviations, errors, or defects, or the consequences thereof, that remained unnoticed in the samples, models or examples approved or corrected by the Customer.
- 17.8 Spirotech will not be liable for any violation of any patents, licences and/or other intellectual property rights of third parties by using data provided by or on behalf of the Customer. Spirotech will also not be liable for any damage or loss of raw materials, semi-finished products, models and/or other items made available by the Customer.



- 17.9 The Customer agrees to indemnify Spirotech, its employees, and any auxiliary persons it has engaged to perform the Agreement against any third-party claims, including claims based on product liability, relating to Spirotech's performance of the Agreement, irrespective of the cause, and against any costs ensuing from such claims for Spirotech.
- 17.10 The Customer agrees to indemnify Spirotech at all times against any claims based on Article 7:658 of the Dutch Civil Code and against any compensation for damage to the personal property of Spirotech's employees, whether or not seconded, and/or of third parties engaged by Spirotech. The Customer is obliged to maintain and ensure safe working conditions.
- 17.11 Any damage to Products caused by damage to or wilful destruction of packaging of the Products is at the Customer's expense and risk.
- 17.12 In all cases in which Spirotech is obliged to pay damages, these will never exceed the invoice value of the Products and/or Services supplied that caused the damage or in connection with which the damage was caused. Furthermore, if the damage is covered by Spirotech's business liability insurance, the compensation will in no event be in excess of the amount actually paid out by the insurer in the case in question.
- 17.13 Unless Spirotech has accepted the claim, all claims against Spirotech will lapse 12 months after the claim arises.
- 17.14 The Customer agrees to indemnify Spirotech, and all Spirotech employees, against any third-party claims (including administrative and/or criminal fines), including from Spirotech employees, who suffer damage in connection with the performance of the Agreement due to the Customer's acts or omissions and/or the inaccuracy or incompleteness of data or information provided by or on behalf of the Customer.
- 17.15 The Customer agrees to indemnify Spirotech and hold Spirotech harmless for and against any liabilities, claims, costs, expenses, damages and losses relating to or caused by defects that are not covered by the warranty.
- 17.16 For the avoidance of doubt, this Article 17 will remain in full force and effect regardless of the termination, rejection or expiration of any agreement.

## **18 Returning Products**

- 18.1 Products sold may only be returned to Spirotech, irrespective of the reason, with the prior written consent of and subject to the return and/or other instructions given by Spirotech. The Products will at all times remain at the Customer's expense and risk. Any Products that are returned without Spirotech's prior written consent will be refused. Unless otherwise agreed in writing, a Product may only be returned by the Customer to Spirotech subject to the return policy included in this Article. If the Customer fails to comply with Spirotech's return policy, the Customer will be liable for and will agree to reimburse Spirotech all damages and costs suffered and incurred by Spirotech as a result of such non-compliance by Customer.
- 18.2 Not all Products are eligible to be returned. Only Products that meet each of the following criteria may be returned:
- a. they must be Spirotech Standard Products (Spirotech Special Products and/or Spirotech Customised Products cannot be returned, unless otherwise agreed in writing);
  - b. the Products may not be older than 6 months from the date on which the Spirotech Customer bought the Product;
  - c. the Products must be unused and the packaging must be in perfect condition.
- 18.3 Pursuant to Article 18.2 Products may only be returned if their total net price (as invoiced by Spirotech, after deducting discounts and exclusive of VAT and other taxes) is in excess of EUR 500 (five hundred euros).
- 18.4 All Products returned to Spirotech must be packaged in order to prevent damage during shipment and must be insured against damage or loss. Spirotech accepts no liability for damage to Products sent to Spirotech. The Customer is responsible for all transport costs and damage to the Product incurred during transport to Spirotech.
- 18.5 As soon as Spirotech has assessed and accepted the Customer's return shipment, Spirotech will provide the Customer with a reference number and instructions for returning the Product. All returned Products must be accompanied by the original Order Confirmation, invoice and/or packing slip and the return reference number must be stated on the outside of the box.
- 18.6 If Spirotech has agreed to the return shipment, and subject to the Products being returned in good condition and the Customer's compliance with the return policy as set out in this Article, Spirotech will credit a basic value of 75% of the net price of the Product applicable at the time when the Product is returned to the Customer's account, unless otherwise agreed in writing. The transport costs are payable by the Customer or will be deducted from the amount to be credited by Spirotech.
- 18.7 If a Product is not returned in accordance with Spirotech's return policy, the returned Product will not be credited and will become Spirotech's property. At the Customer's request, and provided it has paid the transport costs, Spirotech will return these Products to the Customer.

## **19 Cancellations**

- 19.1 Once placed an order cannot be cancelled. If the Customer nevertheless cancels all or part of an order placed, it will owe Spirotech all reasonable costs incurred by Spirotech in connection with performing the order, the work performed and the profit lost in fulfilling the order, plus VAT.

## **20 Spirotech staff**

- 20.1 The Customer is not permitted to enter into an employment contract with any person employed by Spirotech or who has been employed by Spirotech in a previous 12-month period, or to have this person perform work for the Customer in any other way, unless that work is performed under an Agreement concluded with Spirotech, without the prior written consent of Spirotech.
- 20.2 The prohibition as set out in this Article applies from the date on which the first Agreement is concluded between Spirotech and the Customer until 12 months after the last order under the Agreement is performed for the Customer.
- 20.3 In the event of a violation of the prohibition set out in this Clause 20, the Customer will forfeit a penalty of EUR 10.000 per violation and EUR 250 in respect of and for Spirotech's benefit for each day that the violation continues, without prejudice to Spirotech's right to compensation for the damage caused by the violation and without prejudice to its right to claim performance of this agreement.

## **21 Protection of personal data**

- 21.1 When collecting and (further) processing personal data in the context of the Agreement, of or for the benefit of the Customer, Spirotech will comply with its obligations under the General Data Protection Regulation (GDPR), the GDPR Implementation Act and, as from its entry into force, the ePrivacy Regulation and the related laws and regulations, and will take appropriate protective measures.
- 21.2 If, in Spirotech's discretion, Spirotech must be considered the processor within the meaning of the GDPR, the Customer will enter into and sign a written processing agreement with Spirotech at Spirotech's first request, in addition to the provisions of this Article, in accordance with the model to be supplied by Spirotech.
- 21.3 When collecting and (further) processing personal data in the context of the agreement, of or on behalf of Spirotech, the Customer will comply with its obligations under the General Data Protection Regulation (GDPR), the GDPR Implementation Act and, as from its entry into force, the ePrivacy Regulation and the related laws and regulations, and will take appropriate protective measures. The Customer agrees to indemnify Spirotech against any and all third-party claims (including, in any event, of users and governmental bodies), governmental financial sanctions and costs (including legal fees), arising from the Customer's breach of any legal requirement relating to the processing of personal data.

## **22 Representation**

- 22.1 If the Customer is acting on behalf of one or more other parties, it will be liable towards Spirotech as if it were the Customer, without prejudice to such other parties' liability.
- 22.2 If Spirotech concludes an agreement with two or more natural persons or legal entities, all customers will always be jointly and severally liable towards Spirotech.
- 22.3 If Spirotech concludes an agreement with a company in the process of incorporation, the incorporators will each remain jointly and severally liable for the entire amount after the agreement has been ratified as well.

## **23 Notices**

- 23.1 All notices from the Customer to Spirotech must be sent to the address stated in the Order Confirmation. Spirotech may send notices to the Customer at the email address or postal address provided by the Customer when placing the order. A notice shall be deemed to have been received and duly given 24 hours after an email has been sent or three days after the date on which a letter was posted. As evidence of such notice it will be sufficient, if sent by letter, to demonstrate that that letter was duly addressed, stamped and sent by mail, and if sent by email, to demonstrate that the email was sent to the addressee's email address.

## **24 Transfer of Rights and Obligations**

- 24.1 All agreements between Spirotech and the Customer will be binding upon their respective successors and assigns.
- 24.2 The Customer may not transfer, assign, encumber, subcontract or otherwise dispose of any Agreement, or any rights or obligations under such Agreement, without Spirotech's prior written consent.
- 24.3 Spirotech may at all time transfer, assign, encumber, outsource or otherwise dispose of any Agreement, or any rights or obligations under such Agreement, during the term of the agreement.

## **25 Force majeure**

- 25.1 If Spirotech is prevented from fulfilling the Agreement due to an event of force majeure, it may suspend the performance of the agreement. In that case, the Customer is not entitled to any compensation of damage, costs or interest.
- 25.2 A Force Majeure Event includes any act, event, non-event, omission or accident beyond Spirotech's control and in particular (without limitation): (i) strikes, exclusions or other labour disputes; (ii) commotion, riots, invasion, terrorist attack or threat of a terrorist attack, war (whether or not declared) or the threat of or preparation for war; (iii) fire, explosion, storm, flood, earthquake, soil subsidence, pandemic, epidemic or other natural disasters; (iv) the inability to use railways, ships, aircraft, motor vehicles or other public or private means of transport; (v) the inability to use public or private telecommunications networks, (vi) cyber terrorism or other forms of cyber attacks, security incidents, intentional or unintentional corruption or loss of data (vii) government acts, decisions, legislation, regulations, or restrictions; (viii) defects in machinery; and (ix) the non-delivery or late delivery of products or services to Spirotech by third parties engaged by Spirotech.
- 25.3 Spirotech's performance under an Agreement will be deemed to have been suspended for the duration of the Force Majeure Event, and Spirotech will be granted an extended period for performance during that period.
- 25.4 If a Force Majeure Event continues for more than thirty consecutive days, the parties may terminate that part of the Agreement that cannot be performed by giving written notice to the other party.
- 25.5 In the event that the performance of the Agreement is suspended in accordance with Article 25.3 and/or all or part of the Agreement is terminated by Spirotech in accordance with Article 25.4, the Customer will not be entitled to any compensation for loss, damage, costs or interest.
- 25.6 Upon termination of the Agreement in accordance with Article 25.4, Spirotech may demand payment from the Customer of all costs incurred by Spirotech in the performance of the Agreement prior to such termination, including, but not limited to, the costs of raw materials and other materials purchased by Spirotech and transport costs incurred by Spirotech.

## **26 Waiver**

- 26.1 If, at any time during the term of an Agreement, Spirotech does not insist on the strict performance by the Customer of its obligations under the Agreement or of any of these conditions, or if Spirotech does not exercise or institute the rights or remedies to which it is entitled under the Agreement, this shall not constitute a waiver of such rights or remedies and shall not relieve Customer from the performance of such obligations.
- 26.2 Any waiver by Spirotech in respect of any non-compliance will not constitute a waiver of any subsequent non-compliance
- 26.3 Any waiver by Spirotech in respect of any of these terms and conditions will not be effective until it is expressly stated that it is a waiver and this is communicated to the Customer in writing in accordance with Article 23.

## **27 The right to amend these Terms and Conditions**

- 27.1 Spirotech reserves the right to revise and amend these terms and conditions from time to time.
- 27.2 The Customer is subject to the policies and conditions in force at the time it orders Products or Services from Spirotech, unless by law or a government authority a change in that policy or these terms and conditions is required (in which case such change will also apply to orders already placed).

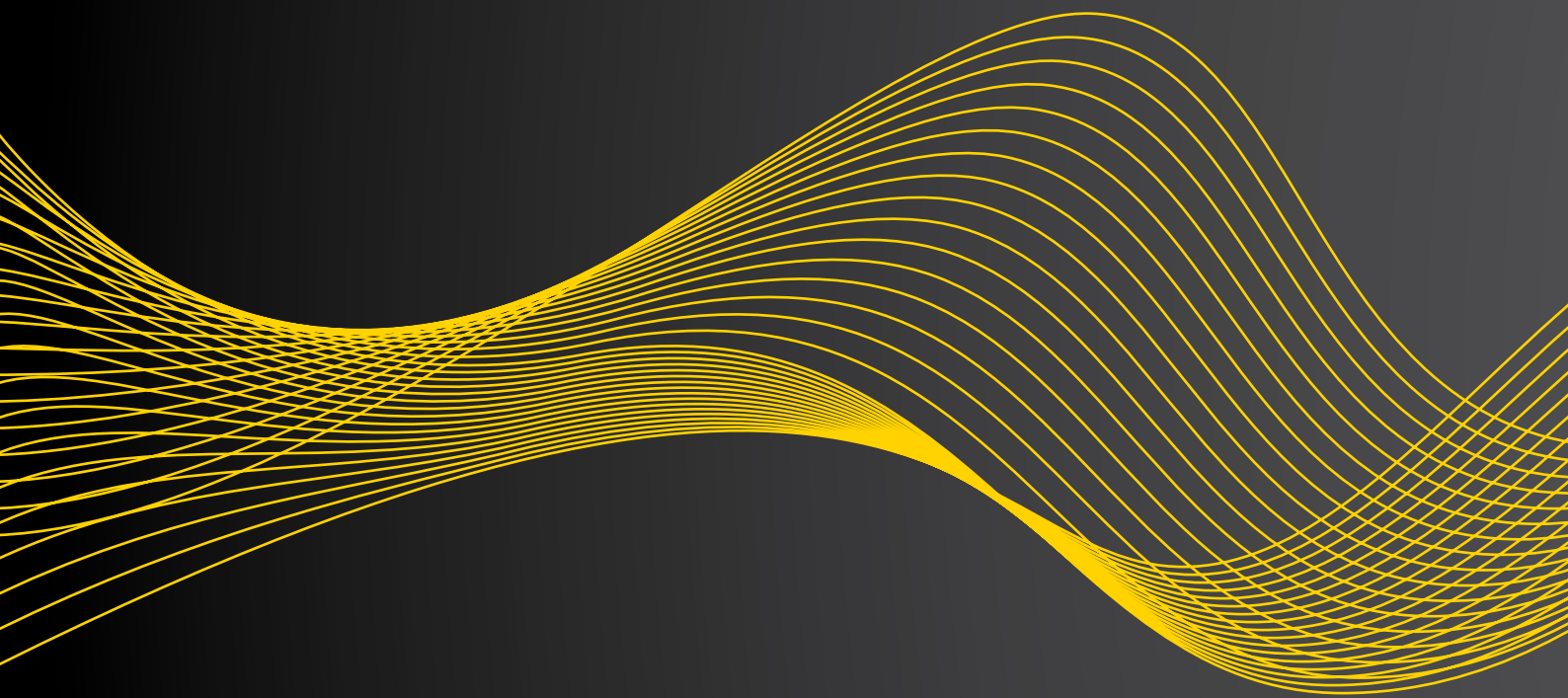
## **28 Governing law and jurisdiction**

- 28.1 All agreements between Spirotech and the Customer are governed by and will be interpreted in accordance with the laws of the Netherlands.
- 28.2 In addition, the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention 1980) applies to all agreements between Spirotech and the Customer.
- 28.3 The competent court in the district of Oost-Brabant, 's-Hertogenbosch location, has exclusive jurisdiction to hear all disputes arising from or related to the Agreement and other agreements concluded between Spirotech and the Customer. In departure from this provision, Spirotech may also and at all times submit a dispute or claim to the competent court of the place where Customer is domiciled, established, or has its registered office.

## **29 Final provisions**

- 29.1 The nullity or voidability of any provision of these Terms and Conditions or of agreements to which these Terms and Conditions apply will not affect the validity of the other provisions. Spirotech and the Customer must replace any nullified or voided provisions with valid provisions whose meaning is as similar as possible to that of the nullified or voided provisions.
- 29.2 The Dutch text is decisive when explaining and interpreting these General Terms and Conditions.

# MAXIMISING PERFORMANCE FOR YOU



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