

ARTICLE 1. | DEFINITIONS

The following terms with the following meanings are used in these terms and conditions of supply, insofar as this does not ensue otherwise from the nature or effect of the provisions.

1. DiBis: DiBis Digital B.V., or as the case may be DiBis Benelux B.V., the users of these terms and conditions of supply, legal entities incorporated under Dutch law, established at Kaapstanderweg 1F, 8243RB in Lelystad, the Netherlands, registered in the Commercial Register under Ch. of Comm. number 39078447 and 65306457 respectively.
2. The other party: every natural person, or at least those persons acting in the exercise of a profession or company, or as the case may be a legal entity, with which DiBis has concluded, or intends to conclude, an agreement.
3. Agreement: every purchase agreement that has come into effect between DiBis and the other party, whereby DiBis has undertaken toward the other party to deliver products, at a price to be agreed.
4. Products: all items to be delivered by or on behalf of DiBis to the other party, which can include, although this is not intended to be an exhaustive list, electronic items for industrial application, such as screens and other equipment, whether or not these will be assembled or designed in accordance with the specifications of the other party.
5. In writing: traditional communication in writing as well as digital communication to be saved in a permanent data carrier, such as email communication.

ARTICLE 2. | GENERAL PROVISIONS

1. These terms and conditions of supply apply to every offer from DiBis and every agreement that has come into effect.
2. The applicability of the purchase or other terms and conditions of the other party is expressly rejected.
3. Derogation from the provisions of these terms and conditions of supply is exclusively possible if in writing. If and insofar as that which parties have expressly agreed in writing derogates from the provisions of these terms and conditions of supply, that which parties have expressly agreed in writing will apply.
4. Annulment or voidness of one or more of the present provisions will not affect the validity of the other provisions. Parties will be obliged as and when necessary to enter into mutual consultation in order to make arrangements for a replacement with regard to the affected clause. The objective and effect of the original provision will be taken into consideration as much as possible.

ARTICLE 3. | OFFER AND COMING INTO EFFECT OF THE AGREEMENT

1. Every offer from DiBis is without obligation, even if a period for acceptance is set out therein.
2. The other party cannot derive any rights from an offer from DiBis which contains an apparent error or mistake.
3. Furthermore, the other party cannot derive any rights from an offer from DiBis which is based on incorrect or incomplete data provided by the other party.
4. All data set out or notified by DiBis in offers, the agreement, draft designs, on the basis of samples and/or otherwise, also including represented images, drawings, colours, stated weights, dimensions etc. are indicative, unless the accuracy and completeness thereof are expressly guaranteed (by the manufacturer of the products). Derogations between the deliveries set out by DiBis on the one hand, and that which is actually delivered, cannot be a reason for suspension or termination of the agreement, compensation, or any other set-off compensation, if the derogations are of minor importance. Derogations are in any event of minor importance if these have no or minor impact on the value in use of the products to be delivered.
5. Every agreement comes into effect at the time when the order is confirmed in writing by DiBis to the other party. The confirmation of the order from DiBis will be deemed to correctly and completely represent the agreement, unless the other party has made a complaint in writing stating reasons to DiBis with regard to this within 48 hours after receipt of the confirmation of the order.
6. A combined quotation will not oblige DiBis to specific performance of a part of the offer at a corresponding part of the price stated.
7. If the other party concludes the agreement on behalf of another natural person or legal entity, the other party states by means of entering into of the agreement that it is authorised for this purpose. The other party is, in addition to this natural person or legal entity, jointly and severally liable for the fulfilment of the obligations under this agreement.

ARTICLE 4. | EXECUTION AND DELIVERY PERIODS

1. DiBis makes endeavours to comply with the execution and delivery periods, which it has undertaken toward the other party, but these periods are exclusively to be regarded as indicative, and not as final deadlines. Default on the part of DiBis will not commence any earlier than after the other party has given DiBis notice of default in writing, which notice of default will set out a reasonable period during which DiBis can still perform the agreement and the performance was not forthcoming after the expiry of the last-mentioned period.
2. The periods as referred to in subclause 1 will not commence any earlier than after DiBis has received all data from the other party, which data is required for the execution, or as the case may be the delivery.

ARTICLE 5. | DELIVERY OF PRODUCTS

1. Unless expressly agreed otherwise the products will be supplied by being delivered to the delivery address stated by the other party. In the absence of a delivery address the invoice address will be regarded as the delivery address. In the event of such a delivery DiBis will determine the manner of transport and dispatch of the products. DiBis will at all times personally determine the manner of the packaging of the products.
2. If DiBis is not responsible for arranging the transport the products will be transported at the expense and risk of the other party.
3. DiBis retains the right to partial delivery of the orders.
4. In the event the agreed delivery period is exceeded, the other party will never be entitled to refuse to take receipt of the products, or to refuse to pay the amounts owed by the other party on the basis of the agreement.
5. If the products could not be delivered as a result of a circumstance to be attributed to the other party and the products have been returned to DiBis, DiBis will store the products at the expense and risk of the other party, without prejudice to the obligation of the other party to pay the amounts owed by the other party on the basis of the agreement.
6. In the event that the other party refuses to purchase the ordered products, or is otherwise in omission of taking receipt of the products, the other party will, on first request from DiBis, inform DiBis within which period the products will still be purchased. This period will never be longer than one month after the day of the request as referred to in the previous sentence. DiBis will be entitled to terminate the agreement if the other party, after the expiry of the period referred to in the previous sentence, has still omitted to purchase the products, without prejudice to the obligation of the other party to payment of the amounts owed by the other party on the basis of the agreement, including the costs of the storage of the products.
7. If after application of subclauses 4, 5 and 6 DiBis incurs costs, which would not be in existence if the other party had properly fulfilled its obligations referred to therein, these costs will be additionally at the expense of the other party in accordance with reasonableness.

ARTICLE 6. | CUSTOM MADE PRODUCTS

1. The provisions of this article apply to the agreement whereby the other party has given instructions to DiBis for assembly, or as the case may be designing of products, in accordance with the specifications of the other party.
2. The other party will be obliged to provide DiBis, in advance as well as during the performance of the agreement, with all relevant data and documents, which are reasonably necessary for the proper performance of the agreement.

3. The other party guarantees the accuracy of all data and documents, which the other party makes available to DiBis for the performance of the agreement. DiBis will never accept any liability for damage arisen because DiBis proceeded from the incorrect and incomplete data provided by the other party. The other party furthermore guarantees that with the delivery of this data and documents no infringement is made of the copyright or other intellectual property rights of third parties. The other party indemnifies DiBis against all possible claims by third parties concerning this.

4. The characteristics of the products set out, or made known, by DiBis in the offer, the agreement, draft designs, on the basis of samples and/or otherwise, also those which in accordance with specifications from the other party are assembled or designed, can derogate on minor points from that which will be actually delivered. Minor points are defined inter alia as follows: all minor derogations from characteristics, including colours, dimensions, weights and functionalities of the products, which are not reasonably onerous for the other party, and which reasonably ought to be tolerated by the other party. The presence of such derogations will not provide a ground for the other party to suspend its obligations under the agreement, to terminate the agreement wholly or in part, or as the case may be to claim compensation or any other set-off compensation. Derogations which, taking all circumstances into consideration, reasonably do not have, or have only minor impact on the value in use of the delivery, will always be deemed to be derogations that are of minor importance.

ARTICLE 7. | INSPECTION AND COMPLAINTS

1. The other party must at the time of the delivery of the products immediately inspect whether the delivery corresponds with the agreement. If in the opinion of the other party the delivery does not correspond with the agreement the other party must promptly inform DiBis of this. If the defect could not be reasonably noticed promptly during the delivery the other party must inform DiBis in writing of this defect no later than within two days after the delivery of the products.

2. If the other party does not make a complaint in a timely manner, no obligation whatsoever will ensue for DiBis from such a complaint from the other party, without prejudice to the provisions of article 8.

3. Even if the other party makes a complaint in a timely manner the obligation of the other party to payment in a timely manner remains.

ARTICLE 8. | GUARANTEE

1. DiBis will deliver the products exclusively with a guarantee insofar as this is expressly agreed, in the absence of which the guarantee will be limited in any event to any of the manufacturer's guarantees delivered with the products by the manufacturer of the products.

2. The applicable guarantee will lapse, without prejudice to any expressly agreed guarantee conditions, if a defect of the product is the result of an external cause, or otherwise cannot be attributed to DiBis. This includes, although this is not intended to be an exhaustive list, defects as a result of damage, lightning strike, fire or water damage, incorrect or improper use or maintenance, use in conflict with the instructions for use, other instructions from or on behalf of DiBis and repairs that are executed without prior permission in writing from DiBis.

3. Products can never be returned without prior permission in writing from DiBis.
4. Any return consignments must be accompanied by a copy of the invoice and the RMA form containing a clear description of the defect or the complaint for each product to be returned.
5. If a defect of a delivered product does not fall under the guarantee DiBis will execute the repair, if the repair amount attached thereto is less than € 150, without prior agreement from the other party. If the amount is more than € 150 a quotation will be issued. If the other party does not wish to have the products repaired, or as the case may be if it appears that the products were not defective, at least € 25 as well as the costs of returning the products, will be charged to the other party. The other party must pay these costs within 14 days after the invoice date.

ARTICLE 9. | FORCE MAJEURE

1. DiBis will not be obliged to fulfil any obligation under the agreement if and for as long as DiBis is prevented from this by circumstances that cannot be attributed to DiBis pursuant to the law, a legal action, or according to generally accepted standards, including the event that DiBis, through the actions of third parties, is not capable of giving performance to the agreement (further) (in a timely manner). Force majeure further includes, in addition to that which is included therein by legislation and case law, inter alia business interruptions, or interruption of operations of whatsoever nature, and regardless of in what manner this has arisen, as well as delayed or late supply of the products by third parties and transport difficulties, or hindrances of whatsoever nature.
2. If and insofar as the force majeure situation makes the performance of the agreement permanently impossible, parties will be entitled to terminate with immediate effect the agreement for the part that the force majeure situation relates to.
3. If DiBis at the occurrence of the force majeure situation has already fulfilled its obligations partially, or if it can only fulfil its obligations partially, it will be entitled, unless no independent value accrues thereto, to separately invoice for the part already executed, or for the parts of the agreement that can be executed, as if there was an independent agreement.
4. Damage as a result of force majeure will never be eligible for compensation, without prejudice to the application of the previous subclause.

ARTICLE 10. | SUSPENSION AND TERMINATION

1. If the circumstances justify this, DiBis will be entitled to suspend the performance of the agreement, or to terminate the agreement, wholly or in part, with immediate effect, if and insofar as the other party does not, does not in a timely manner, or does not completely fulfil its obligations under the agreement, or as the case may be if after the concluding of the agreement circumstances come to the knowledge of DiBis, which provide good grounds to fear that the other party will not fulfil its obligations.

2. If the other party is declared insolvent, has applied for (provisional) moratorium, any attachment is levied on its goods, or in the events in which the other party otherwise cannot freely dispose of its assets, DiBis will be entitled to terminate the agreement with immediate effect, insofar as the other party has not already provided sufficient security for the payment of the amounts owed by it on the basis of the agreement.
3. Furthermore, DiBis will be entitled to terminate the agreement if circumstances occur, which are of such a nature that performance of the agreement or unaltered maintaining of the agreement cannot reasonably be required from DiBis.
4. The other party will never make claim to any form of compensation related to the right of suspension and right of termination exercised by DiBis on the basis of this article.
5. Insofar as this can be attributed to it, the other party will be obliged to compensate the damage suffered by DiBis resulting from the suspension or termination of the agreement.
6. If DiBis terminates the agreement on the basis of this article, all claims against the other party will be immediately due and payable.

ARTICLE 11. | PRICES AND PAYMENTS

1. All prices of DiBis are in Euro, excluding VAT and other duties imposed by authorities. The prices of DiBis are based on the costs factors, also including prices of materials, labour costs and freight costs applicable at the time of the issuing of the offer, or as the case may be the coming into effect of the agreement. DiBis will be entitled to charge on the interim price increases of such cost price determining factors to the other party.
2. DiBis is at all times entitled to demand that the agreed price will be paid wholly or in part by means of advance payment.
3. Payments must take place by means of transfer unless another method of payment is agreed. Payment must take place within the period set out in the invoice and also in the manner prescribed by DiBis.
4. DiBis will be entitled to make the invoices exclusively available by email to the other party. If invoices are forwarded by regular mail on the request from the other party, DiBis will be entitled to charge the costs thereof, as well as the reasonable administrative costs, to the other party.
5. DiBis will not be obliged to give (further) performance to the agreement any earlier for as long as the other party is in default of payment of any demanded advance payment as referred to in subclause 2.
6. The other party will never be entitled to set off any of its possible claims against DiBis against claims of DiBis against the other party.
7. In the event of liquidation, bankruptcy or (provisional) moratorium of the other party, the claims against the other party will be immediately due and payable.

8. If payment in a timely manner is not forthcoming the default of the other party will commence by operation of law. From the day on which the default of the other party commences, the other party will owe interest over the outstanding amount, which interest will be 1 % per month, whereby a part of a month will be regarded as a full month.

9. All reasonable costs, such as judicial, extrajudicial and enforcement costs, incurred to acquire payment of the amounts owed by the other party, will be at the expense of the other party.

ARTICLE 12. | LIABILITY AND INDEMNITY

1. Except for in the event of intention and wilful recklessness on the part of DiBis, and with the exception of the provisions of article 7 and 8, DiBis will no longer be liable for defects of the delivery after the delivery of the products.

2. DiBis is in particular not liable for damage related to the use of the products, which use gave cause to assume that the guarantee, regardless of whether the guarantee was actually applicable, would have lapsed due to this, inter alia as referred to in article 8.2.

3. DiBis will never be liable for damage arisen due to the acts or omissions of third parties, which third parties are involved by DiBis in the performance of the agreement.

4. DiBis does not guarantee that the products are suitable for the purpose for which the other party wishes to use them, not even if this purpose has been made known to DiBis. DiBis is not liable for the consequences of any incorrect application of the products by the other party and/or third parties.

5. The other party will bear the damage caused by inaccuracies or incompleteness in the data provided by the other party, a shortcoming in the fulfilment of the obligations of the other party, which ensue from the law or the agreement, as well as any other circumstance that cannot be attributed to DiBis.

6. All data and instructions (for use) are compiled and provided by DiBis, or as the case may be the manufacturer of the products, to the best of their abilities, but are entirely without obligation and without any liability ensuing therefrom for DiBis.

7. DiBis does not accept any liability for damage for which the manufacturer of the products must bear the damage pursuant to the statutory provisions for product liability.

8. DiBis will never be liable for consequential loss, also including lost profit, loss suffered and loss due to business interruption.

9. The liability of DiBis is limited to an amount not exceeding the invoice amount of the agreement, or at least to that part of the agreement which the liability of DiBis relates to, always provided that the liability of DiBis will never amount to more than the amount that is actually paid with regard to the case concerned pursuant to the liability insurance taken out by DiBis, plus any amount of the deductible which is not borne by the insurer under the policy conditions, which amount is applicable to DiBis pursuant this insurance.

10. The time limit of all claims and defences toward DiBis amounts to one year.

11. Except for in the event of intention or wilful recklessness on the part of DiBis, the other party will indemnify DiBis against all claims by third parties, on whatsoever basis, with regard to compensation of damage, costs or interest, related to the performance of the agreement by DiBis and the use of the products delivered by or on behalf of DiBis.

ARTICLE 13. | RETENTION OF TITLE

1. All products sold by DiBis remain the property of DiBis until the other party has properly fulfilled all obligations under the agreement.

2. Except for insofar as must be deemed to be permissible in the context of its usual business operations, the other party is prohibited from selling, pledging or in any other manner charging the products that are subject to retention of title.

3. The other party will be obliged to keep the products delivered subject to retention of title with due care and as recognisably the property of the supplier.

4. If third parties levy attachment by garnishment on the products that are subject to retention of title, or as the case may be wish to establish or enforce rights thereto, the other party will be obliged to inform DiBis of this as soon as possible.

5. In the event of sale and/or delivery by the other party to third parties in the context of its usual business operations, as well as in the event of that which is otherwise set out in this article, the purchase price will be immediately due and payable in full. In the event of sale to third parties the other party is also obliged to stipulate retention of title, which must be at least as far-reaching as the retention of title in this article, always provided that it is not permitted to grant any entitlement to encumbrance or disposals to the third party. At the time of onward supply to a third party, DiBis will acquire a nonpossessory pledge on the claim(s) of the other party against the third party, with the right to inform this third party of this and the right to claim and receive payment.

6. The other party provides unconditional permission to DiBis, or to third parties designated by DiBis, to enter all locations where the products that are subject to retention of title are situated. In the event of default on the part of the other party, DiBis will be entitled to collect (have collected) the products referred to here. The other party must provide DiBis on first request with all information in order to be able to exercise its property rights, which is subject to an immediately due and payable financial penalty of € 1,000 per day during which the other party is in default thereof and without DiBis being required to give the other party notice of default for this purpose. All reasonable costs related to the exercise of its property rights will be at the expense of the other party.

7. If the other party, after the sold products have been delivered to the other party, has fulfilled its obligations, the retention of title will be restored with regard to these products if the other party does not fulfil its obligations under an agreement that is concluded later.

ARTICLE 14. | INTELLECTUAL PROPERTY

1. DiBis retains all intellectual property rights to the offers issued by DiBis, the descriptions, models, designs, trademarks and product specifications made available to the other party, insofar as these rights are not vested in other parties. This also applies with regard to the software delivered with the products, or as the case may be installed therein. In the event of products designed in accordance with the specifications from the other party, the intellectual property rights thereto are vested in the other party, but only from the time when the other party has fulfilled all obligations on the basis of the agreement concerned, including inter alia the approval of the design and any samples, as well as the payments of the development costs, and other amounts owed by the other party on the basis of the agreement to DiBis.
2. The other party is prohibited from reproducing (having reproduced), or otherwise using (having used) the goods in which the intellectual property rights of DiBis, or its licensors, are vested in a manner other than that which necessarily ensues from the nature or effect of the agreement.
3. The other party is not permitted to remove (have removed) or to change (have changed) any indication of the intellectual property rights of DiBis, or of its licensors.
4. In the event of breach of the provisions of subclause 2 and/or 3 DiBis retains all rights that accrue to DiBis pursuant to the law, including inter alia the right to compensation.

ARTICLE 15. | CONCLUDING PROVISIONS

1. Dutch law exclusively applies to each agreement and all legal relationships between parties ensuing therefrom.
2. Parties will not apply to the court until after they have made best endeavours to resolve the dispute in mutual consultation.
3. The court with competent jurisdiction within the district of the place of business of DiBis is exclusively designated to hear and determine legal disputes.
4. The Dutch language version of these terms and conditions of supply will always be the determining factor for the interpretation of the clauses.