

## A. General provisions

### Article 1. Definitions

In these general conditions is understood by:

Brinkman:	the limited liability company Brinkman B.V., residing in æs-Gravenzande registered at the Chamber of Commerce Delft en Omstreken under number 17145;
consumer:	a contracting party, being a natural person and not acting in the pursuance of a trade or a profession;
professional partner:	a contracting party, being a natural person or a legal entity in the pursuance of a trade or a profession;
goods:	all material objects liable to possession;
buyer/principal:	any contracting party to conclude a contract with Brinkman;
reclamations:	any complaints by the buyer/principal about quality or quantity of the goods delivered or service rendered;
place of delivery:	the place where, in accordance with the contract, the goods are to be delivered, insofar as delivery ex-warehouse has not been agreed upon;
days:	all calendar days;
acceptance testing:	the competence, as stipulated by the buyer/principal, to verify assembly and/or putting into operation for soundness;
legal expenses:	the actual expenses involved in conducting a lawsuit between Brinkman and the buyer/principal, including therein due court levies, the expenses for legal assistance according to the rates of the Nederlandse Orde van Advocaten < Dutch Bar >, the expenses for experts and also the expenses reasonably incurred by Brinkman.

### Article 2. Applicability of these conditions

- 2.1. These conditions apply to all offers, inquiries and communications by Brinkman to a buyer/principal, and also to any contract of purchase or sale, of the contracting of work or to, as the case may be, to any other contract all of the activities performed by Brinkman as a part of this. These conditions also apply to any service contract between Brinkman and a buyer/principal and to the consultancy activities by Brinkman as a part of this.
- 2.2. Every contract is concluded under the condition that these conditions are applicable. The non-applicability of these conditions is, irrespective of its reason, a resolutive condition to the contract concerned.
- 2.3. Stipulations in contradiction to these conditions shall be valid only after written confirmation by the management of Brinkman or its authorized proxyholders.
- 2.4. These conditions were drawn to be applicable to the legal relationship between Brinkman and its professional relations. If a consumer wishes to conclude a contract with Brinkman, article B.3.1. applies.
- 2.5. These conditions will become effective on 1 April 1994 and will be valid for an indefinite period of time.

## B. Offering and effective date

### Article 3. Offering

- 3.1. Brinkman is an enterprise oriented on professional relationships. These conditions are intended for application to the legal relationship between Brinkman and these buyers/principals. Brinkman will have the right to consider a contracting party a professional partner, unless, the buyer/principal has notified Brinkman on concluding the contract, that he or she wishes to contract as a private person. If, in this instance, Brinkman contracts with the buyer/principal, these conditions will apply, subject to imperative statutory provisions prescribing otherwise.
- 3.2. The offers made by Brinkman are free of engagement: they are valid during 30 days, unless otherwise agreed. The prices quoted in an offer are exclusive of V.A.T., and exclusive of costs for packaging, freight and recovery, unless stated otherwise.
- 3.3. Other offers by Brinkman, and also specifications that appear in publications by Brinkman, are also free of engagement. They are subject to change without prior notice.
- 3.4. The offer is based on drawings and further specifications provided by the buyer/principal, unless the contract proves the contrary. Errors in these drawings and specifications shall not result in any liability on the part of Brinkman towards the buyer or, as the case may be, principal, and do not entitle said buyer/principal to claiming from Brinkman any performance. Neither shall Brinkman be held liable in the event that drawings are based on inaccurate specifications.
- 3.5. Unless explicitly stated or confirmed otherwise, the price, stated in the offer, does not include:
  - a. earth, pile-driving, hacking, breaking, foundation, masonry, carpentry, plastering, painting, paper-hanging, repair or any construction work of any nature, nor the connection expenses to the mains of the sewage system, the gas or water supply, or to the electricity grid;
  - b. additional assistance involved in hauling, or, as the case may be, processing those parts not to be processed by Brinkman itself, and also the hoisting or lifting equipment and tackles to be employed to this end;
- 3.6. Brinkman is competent to alter or withdraw an offer after acceptance by the buyer/principal provided this will be effected immediately.

### Article 4. Effective date

- 4.1. A contract shall become effective only through written confirmation on the part of the management of Brinkman and/or its authorized proxyholders. Any additional agreements made at a later stage shall bind parties in the manner identical to the manner by which the contract becomes effective.
- 4.2. The contract's effective date shall be the day the confirmation is sent by Brinkman.
- 4.3. Agreements with or announcements from subordinate members of the personnel of Brinkman shall not bind the latter, unless the procedure stated under 4.1. has been observed. Subordinate personnel, in this context, shall be every employee or member of the staff not holding proxy.
- 4.4. Brinkman enters into any and every contract on the condition, that the buyer/principal is and will remain sufficiently creditworthy. Brinkman is entitled to requesting information from the buyer/principal in order to establish the latter's creditworthiness. The buyer/principal is obliged to give, at first notification from Brinkman, adequate security to ensure compliance with his contractual obligations towards Brinkman. Brinkman is also entitled to suspending the performance of the contract until such a request has been satisfactorily complied with.
- 4.5. Brinkman reserves all rights on the information appearing in its offers, catalogues, price lists and any samples and instructions for use, made available.

## C. Contents of the contract

### Article 5. Time of delivery

- 5.1. An agreed time of delivery shall not be a statutory limit, unless explicitly agreed otherwise. In the event of untimely delivery or, as the case may be, completion, the buyer/principal is to declare Brinkman in default, in writing.
- 5.2. If the agreed time of delivery threatens to expire and Brinkman foresees its failure to comply due to circumstances beyond its control, it is competent, through written notice directed at the contracting party, to dissolve the contract with the buyer/principal without being legally bound to any indemnification, or to conclude a new term of delivery or completion, without prejudice to that provided elsewhere in this contract about force majeure.
- 5.3. Without prejudice to that stipulated in these general conditions with respect to force majeure, it is stipulated, that the time of delivery will be extended by an equal number of working days as have been lost as a consequence of adverse weather conditions (such as for example, rain, heavy winds, frost, snow, glazed frost, fog or storm) during the period between the coming into effect of this contract and the intended time of delivery, irrespective of this not being feasible for the buyer/principal or for other buyers/principals of Brinkman, resulting in a subsequent disruption of Brinkman's work schedule.
- 5.4. The term of delivery has been fixed in the expectation, that operations can be performed as foreseeable at the moment of the offer and that materials which are to be supplied by third parties will be delivered on time. If third parties are in default in this respect, the term of delivery will be extended by the period Brinkman reasonably needs for obtaining an alternative delivery.
- 5.5. A term of delivery will only become effective, after the itemized order has been accepted in writing and after Brinkman is in possession of all written information necessary for execution. If (partial) advance payment has been stipulated, the term of delivery will only become effective after Brinkman has received this payment. If the room in which the goods to be supplied by Brinkman are to be delivered, or assembly and installation operations are to be performed by it, the term of delivery will only become effective, after this room has been made available to Brinkman in a clean and empty condition.
- 5.6. If, after expiration of the term, no delivery has been taken by the buyer/principal, or if delivery is impossible due to circumstances beyond the control of Brinkman, the good to be delivered by Brinkman will be stored for account and risk of the buyer/principal.

### Article 6. Delivery

- 6.1. Unless agreed otherwise, the warehouses of Brinkman in æs-Gravenzande shall be place of delivery. If another place has been agreed for the delivery, the buyer/principal will be obliged to take those measures, necessary for unhindered delivery or assembly of the goods to be supplied or to be installed.

6.2. When a part of the order is completed, Brinkman is at liberty to deliver, at its option, this part or to wait until the entire order is completed. If it has not been explicitly agreed that delivery will be made from stock, Brinkman is entitled to supply from stocks of third parties.

6.3. With respect to the weights and dimensions of all materials, Brinkman always reserves the right to the usual tolerances, as they are customary with the manufacturers who are charged with the manufacture of the product to be delivered. Minor variances with respect to the given measurements, weights, numbers and any and all quantitative specifications will not be considered deficiencies.

#### Article 7. Transport

7.1. If another place of delivery has been designated, goods to be delivered by Brinkman will be transported by means of its own means of transport or by transporters designated by Brinkman, unless explicitly otherwise agreed. They will be delivered on the vehicle, insofar as it can gain access by asphalted public highway. The expenses for this transport are included in the price. Any possible further transport will be for account of the buyer/principal, unless explicitly otherwise agreed.

7.2. Unless transport is arranged by Brinkman itself, the goods travel for risk of the buyer/principal.

#### Article 8. Assembly and putting into operation

8.1. All installations and/or facilities necessary for erecting the goods to be assembled and/or for the correct operation of the goods in an assembled condition, shall be for account and risk of the buyer/principal and are outside the responsibility of Brinkman, subject to the production of the installations and/or facilities in question being performed by or by order of Brinkman according to information provided and/or drawings made by Brinkman or by order of Brinkman. Apart from this last mentioned exception, the buyer/principal bears full responsibility and liability towards Brinkman for the correct and timely performance of the aforementioned installations and/or facilities.

8.2. The buyer/principal shall ensure for own account and risk, that:

- a. the personnel of Brinkman can, as soon as they have arrived at the place of destination, start with their activities and furthermore at all times be enabled to perform their activities during the usual working hours and also outside normal working hours, if it is deemed necessary by Brinkman to fix the point in time for beginning and/or ending the activities outside normal working hours, and Brinkman has informed the buyer/principal in time;
- b. adequate accommodation and facilities in accordance with legal requirements are available for the personnel of Brinkman;
- c. the access roads to the place for erection are suitable for the means of transportation;
- d. the designated construction site is suitable for storage and assembly;
- e. the required lockable storage accommodations for materials, tools and other goods are available;
- f. the required and customary assisting workers, auxiliary tools, auxiliary and production materials (fuels, oils and lubricating materials, polishing and other consumables), gas, water, electricity, heating, lighting etc. included therein, will be timely made available in the right place;
- g. all requisite safety and other precautionary measures have been taken and will be maintained;
- h. that the goods despatched at the start of and during the assembly will be present in the right place.

8.3. In the event of loss of time, caused by a delay on account of non-compliance with the stipulations laid down in the first and second paragraph of this article, such an extension of the term of delivery will be allowed as is reasonable, taking into account all circumstances.

8.4. Trials, acceptance testing

8.4.1. If it is necessary for sound delivery or acceptance that trial runs are being conducted, the buyer/principal is obliged to give Brinkman the opportunity, after operational installation, to conduct pre-testing, and also to incorporate those improvements and alterations deemed necessary by Brinkman. If, as a consequence of this, the production process of the buyer/principal is to be disrupted, the expenses involved in this will remain for the buyer/principal.

8.4.2. If an acceptance testing has been agreed, 8.4.1. applies accordingly. Buyer/principal is deemed to have accepted the assembly or, as the case may be, the putting into operation after conclusion of the inspection.

8.4.3. With respect to the acceptance testing, that stipulated in 8.2. and 8.3. applies accordingly.

8.5. Expenses incurred as a result of non-compliance or late compliance with the stipulations laid down in this article, and also the expenses for the acceptance testing, shall be for account of the buyer/principal.

#### Article 9. Prices and price increase

9.1. The agreed prices are founded on the price base for materials, costs of transportation, wages, fiscal costs, import duties and other prevailing price-fixing factors valid on the day the contract becomes effective on the day the offer was made. Only those deliveries specifically indicated, and the expert support under normal conditions are included in these prices.

9.2. Nonetheless, Brinkman is competent, at its own option, to:

- ü charge the buyer/principal for the current price on delivery according to the current price list at that moment;
- ü on-charge the buyer/principal for the interim price increases in the cost-determining factors, among which currency values.

Brinkman is not legally bound to give prior notice of this. Brinkman is legally bound to bring these price increases, in itemized form, to the notice of the buyer/principal as quickly as possible.

9.3. The clause mentioned in paragraph 2 applies to all interim price changes, among which (yet not exclusively) price changes which are carried through by suppliers of Brinkman.

9.4. If, at the request of the buyer/principal with the consent of Brinkman or as an inevitable consequence of the circumstances, a consignment and/or assembly does not conform with the original order or instruction the buyer/principal will be charged for the difference with the fixed price agreed at the time the contract became effective.

9.5. Payments in accordance with this article will have to be effected in conformity with the payment scheme originally agreed upon.

9.6. If it is agreed, that the price will be calculated on the basis of acreage biological protection and/or - control and the number of square metres of crop to be protected and/or to be controlled is larger than appears from the confirmation of order, the price will be adjusted to the actual situation.

9.7. VAT in intracommunal deliveries

The buyer/principal can request Brinkman to designate a delivery as an intracommunal delivery, which is exempt from Dutch VAT. The buyer/principal will only do so if, in his judgment, the following conditions have been complied with:

- ü he is an entrepreneur which is established in the European Community in the sense of the *Wet op de Omzetbelasting 1968* < Law on Sales Tax 1968 > and acquires the purchased goods in the framework of this enterprise;
- ü the (international) VAT-number stated by him can be found in the file of valid international VAT-numbers of the Dutch Revenue authorities and the ascription there corresponds with the name that he uses towards Brinkman;
- ü it must be certain, that the sold goods will actually be brought to another member state and will there be taken delivery of by, or in the name of, the buyer/principal;
- ü all other requirements, to be set for enforcing exemption due to intracommunal deliveries by virtue of the *Wet op de Omzetbelasting 1968*, have been complied with.

With every delivery of goods, Brinkman shall remain competent to charge the buyer/principal for VAT over the purchase price, without stating its reasons for this, also when the buyer/principal has made the aforementioned request to it. Brinkman will charge the buyer/principal for the costs of transportation, despatch, packing and insurance of the goods to another member state, always taxable with VAT.

The buyer/principal will safeguard Brinkman against additional collection of VAT by the Dutch Revenue authorities, and also against all costs, in any way related to this, among which levying interests, collection interests administrative fine and costs of legal action, concerning invoices with respect to the delivery of goods and costs of transport, despatch, packaging and insurance of those goods, over which the buyer/principal has not been charged for VAT, including the costs on account of legal services and/or fiscal legal assistance enlisted by Brinkman in accordance with the rates, fixed by the *Nederlandse Orde van Advocaten* < Dutch Bar >. That stipulated in article 13 shall apply accordingly.

#### Article 10. Drawings, calculations, designs

10.1. Brinkman explicitly reserves all rights with respect to drawings, calculations, models etc. that have been made available to it. They remain the property of Brinkman, even if the buyer/principal has been charged costs for these. Brinkman is only legally bound by them towards the buyer/principal, if they have been included in the contract in writing or are explicitly and specifically referred to in the contract.

10.2. The documents mentioned in paragraph 1 shall not be copied, handed over to third parties, presented for perusal or made public without written permission by Brinkman. The documents are therefore exclusively intended for personal use by the buyer/principal. If the buyer/principal acts in contradiction to the prohibition or order mentioned here, he will forfeit, for every offence, an immediately payable fine, without proof of default being required, in favour of Brinkman amounting to NLG 10,000.ü without prejudice to the right of Brinkman to claim full compensation over and above this fine.

10.3. The buyer/principal shall observe secrecy with respect to the existence and the contents of the contract (to be) concluded with Brinkman and all know-how and information that will come to his knowledge in relation to the implementation of the contract and commit third parties involved by him in the performance of the contract to identical secrecy.

#### Article 11. Payment

11.1. Payment is to be effected within 30 days after date of invoice, unless a different term of payment has been agreed. Payments will be made by remittance in the agreed currency into the bank or giro account indicated by Brinkman. Brinkman is competent to stipulate for a shorter term of payment.

- 11.2. After expiration of the term of payment, the buyer/principal will be in default. Proof of default shall not be required.
- 11.3. From the moment of default, the buyer/principal will owe an immediately payable interest of 2% over and above the current legal interest over the amount payable.
- 11.4. In the event of liquidation, insolvency, bankruptcy, a suspension of payment, conveyancing of the business or merger of the buyer/principal, his obligations towards Brinkman will fall due with immediate effect.
- 11.5. If, after expiration of the term no payment has been effected, the buyer/principal is obliged, at first request from Brinkman, to put up a bank guarantee for the principal sum, interest over a period of 2 years and any other costs as provided in these conditions. If the buyer does not immediately comply with this request, Brinkman is entitled to either claiming the purchase sum payable on demand, or to dissolving the contract by attestation, without prejudice to the rights of Brinkman to full compensation and without prejudice to the right of Brinkman to claiming compliance on the part of buyer/principal with his obligations, both in and out of court.
- 11.6. If it has been agreed, that the goods will be sent to the buyer/principal cash on delivery and he refuses payment of the goods and/or of the costs of freight on arrival at the place of destination, Brinkman is entitled to dissolving the contract immediately by attestation.
- 11.7. If a contract is dissolved in the way provided for in 11.5 and 11.6, all costs of freight, the profits Brinkman has lost, the possible warehousing charges and other expenses are for account of the buyer/principal.
- 11.8. The buyer/principal is obliged to compensate Brinkman for the loss exchange rate of the currency in which the buyer/principal has to pay in relation to the Dutch guilder, calculated from the moment the contract becomes effective.

#### Article 12. Credit restriction

12. Brinkman is entitled to charging a credit restriction surcharge not exceeding 2\_% of the invoice amount, which is not payable in the event of payment within 8 working days after date of invoice.

#### Article 13. Collecting costs

- 13.1. If the buyer/principal fails to meet or defaults in meeting one or more of his commitments, all expenses reasonably incurred for recovering payment out of court will be for the buyer/principal. In the event, when the buyer/principal fails to pay a financial debt, he will owe the collecting rate, fixed by the *de Nederlandse Orde van Advocaten* < Dutch Bar > in *de* Gravenhage towards Brinkman, without prejudice to his further obligations towards Brinkman.
- 13.2. If Brinkman proves to have incurred higher expenses, which were reasonably necessary, these shall also be indemnified.
- 13.3. The buyer/principal owes the legal costs payable in all instances, insofar as these are reasonable. This applies exclusively in the event that Brinkman and the buyer/principal are involved in a legal procedure relating to a contract to which these general conditions apply and a final sentence is passed, whereby the ruling, completely or to a major degree, goes against the buyer/principal.

#### Article 14. Guarantee

- 14.1. Brinkman guarantees that the goods delivered by it are free from errors of design, material and manufacture during a period of 6 months after delivery, without prejudice to that stipulated in article 14 paragraph 4.
- 14.2. If, during this term, any objectionable defect becomes manifest to the good as a consequence of defective material or defective construction, Brinkman shall, at its option, either repair the good free of charge, or have it replaced by another one, provided that the defect is brought to its knowledge immediately upon discovery and, insofar as Brinkman wishes this, the part in question is forwarded immediately, free of freight.
- 14.3. The parts that have been installed as a replacement for the defective material or defective construction are guaranteed by Brinkman during 6 months after putting into operation of the parts.
- 14.4. No further guarantee of any kind, however, is given by Brinkman and no further liability is accepted than that offered or accepted by the manufacturer towards it.
- 14.5. Goods with respect to which guarantee is invoked, may only be returned by the buyer/principal after prior consent by Brinkman. Goods that are returned, yet have not been found to be defective, will be returned to the buyer/principal for his account. In this event, the expenses for the inspection conducted by Brinkman with respect to the reclamation will be for account of the buyer/principal. This shall also apply, if the goods are not returned to Brinkman, but Brinkman conducts an inspection at the request of the buyer/principal at the place of delivery or the construction site or any other place stated by the buyer/principal.
- 14.6. The guarantee shall not apply:
- 14.6.1 if the buyer/principal, during the term of guarantee, has carried out or has ordered third parties to carry out, repairs or alterations to the delivered good, without prior written permission from Brinkman;
- 14.6.2 if the buyer/principal does not fulfil or has not fulfilled his obligations of payment towards Brinkman;
- 14.6.3 if damage to the delivered good is the consequence of improper handling or improper use of the good;

#### Article 15. Liability

- 15.1. Liability issuing from delivery of *ôgoods*.
- 15.1.1 Brinkman is legally liable towards the buyer/principal, in the following manner exclusively:
- a For defects in delivered goods, the liability as stipulated in article 14 of these conditions with respect to the guarantee obligations of Brinkman.
  - c. In all other events, liability of Brinkman shall be limited to:
    - û 10% of the invoice amount, in the event that a term fixed for delivery is exceeded by Brinkman and Brinkman is accountable for this overrun;
    - û 100% of the invoice amount, in the event of a deficiency for which Brinkman is accountable, other than exceeding of the term that has been fixed with respect to the delivery.
- 15.1.2 Brinkman is only obliged to indemnify that damage, which is the direct and immediate result of default on its part. The indemnification intended in the previous paragraph are maximum stipulations.
- Brinkman shall be liable neither for damage incurred to movable and immovable property, nor for damage resulting from non or late commencement of cultivation of the soil on which construction has been performed - or the installation has been assembled -, or other soil being used by the buyer/principal, nor for damage resulting from late putting-into-operation of any good supplied by Brinkman. Damage caused to crops, as well as damage resulting from structural deterioration of the soil shall at no time be considered damage for which Brinkman can be held liable.
- 15.1.3 Neither is Brinkman obliged to indemnify directly or indirectly suffered damage, caused by defects to the supplied installation or goods or their use, other than as provided in article 14 of these conditions.
- 15.1.4 Furthermore, Brinkman is not liable for damage caused during the assembly of goods and/or supplied installations caused by errors or defaulting on the part of third parties or its own personnel.
- 15.1.5 Brinkman is not liable for damage issuing from circumstances that cannot be foreseen by it. Any circumstance which has not been explicitly laid down by the buyer/principal with a view to Brinkmans liability when concluding the contract is considered unforeseeable.
- 15.1.6 Brinkman is not liable for expenses, damage and interests that could arise as a direct or indirect consequence of infringement of patents, licences or other rights of third parties as a consequence of the use of information provided by or by order of the buyer/principal.
- 15.1.7 Brinkman is not liable towards the buyer/principal, if:
- û damage is caused on account of inexpert use by the buyer/principal or as a consequence of defects in the business or management of the buyer/principal or as a consequence of the use of harmful substances or pesticides or herbicides or methods of protection;
  - û damage issues from circumstances that are unforeseen to Brinkman.
    - As unforeseen is considered, any circumstance that has not been explicitly stated by the buyer/principal, when entering into the contract, with a view to the liability of Brinkman;
  - û damage, resulting from the use of information, provided by or from the side of the buyer/principal;
  - û the buyer/principal fails to observe the regulations, instructions, consultancy activities and manuals he receives from Brinkman, or fails to pass these on to possible other buyers;
  - û the buyer/principal has used the supplied goods outside his business or for private purposes.
- 15.2. Liability for Services
- 15.2.1 Brinkman is not liable towards the buyer/principal, if:
- û damage is caused on account of inexpert use by the buyer/principal or as a consequence of defects in the business or management of the buyer/principal or as a consequence of the use of harmful substances or pesticides or herbicides or methods of protection;
  - û damage issues from circumstances that are unforeseen to Brinkman.
    - As unforeseen is considered, any circumstance that has not been explicitly stated by the buyer/principal, when entering into the contract, with a view to the liability of Brinkman;
  - û damage, resulting from the use of information, provided by or from the side of the buyer/principal;
  - û the buyer/principal fails to observe the regulations, instructions, consultancy activities and manuals he receives from Brinkman, or fails to pass these on to possible subsequent buyers;
  - û the buyer/principal has used the supplied goods outside his business or for private purposes.
- 15.2.2 If Brinkman provides services such as for example, though not exclusively, consultancy activities, it fully excludes its liability in all and any cases in which it stipulated no fee for the performance of this service.
- 15.2.3 In the event that the service is provided for a fee, exclusion of liabilities as laid down in article 14 paragraph 1 et seq. applies.
- 15.2.4 The client safeguards Brinkman against all and any claims which third parties might institute against Brinkman in connection with consultancy activities.

### 15.3. Hardship clause

15.3.1 Should it be impossible to assume the liability excluded by Brinkman, due to the exceptional circumstances of any case, its legal liability shall be limited to the maximum payment for which it has insured its liability with a maximum of 75% of the statutory indemnification. This limitation also applies to that stipulated in art. 15.1.1 paragraph b.

15.3.2 Brinkman has covered the risk of contractual and statutory liability by means of an insurance. This involves an own risk. It is also for this reason that the maximum amount, stipulated in the first paragraph of this article (15.3.1.), has been incorporated into these conditions. The part of the statutory indemnification that will be for the account of the buyer/principal, is to be looked upon as a franchise, that is to say, that the first 25% of the amount of the claim will be for the account of the buyer/principal, whereas the remaining 75% will be for the account of Brinkman, all this to a maximum of the insured amount.

### 15.4. Expiration of rights

Every indemnification claim expires after 12 months, calculated from the day on which it originated.

### 15.5. Safeguarding

The buyer/principal safeguards Brinkman against all claims by third parties, issuing from inexpert use of products supplied by it, or from the use not in conformity with the regulations, instructions and manuals as laid down by Brinkman or contrary to the recommendations given by Brinkman, on the part of the buyer/principal and by any other person he is liable for or to whom the buyer/principal should pass on the instructions, manuals, regulations or recommendations.

### Article 16. Reclamations; terms for complaints

16.1 The buyer/principal is to inspect the goods delivered by Brinkman (have them inspected) on delivery, or as quickly as possible (and within a period not exceeding 24 hours after that).  
When doing so he is to check whether the goods delivered are in accordance with the contract, viz.:  
ü whether the correct goods have been delivered;  
ü whether the good delivered corresponds with that agreed upon with respect to quality (e.g. number and quantity);  
ü whether the commodities delivered come up to the quality standards, or  
ü whether no specific quality standards have been stipulated - the standards that normally apply for normal use and/or commercial purposes.

16.2 If visible defects or deficiencies are detected, the buyer/principal has to inform Brinkman about this in writing within 3 days after delivery or inspection. Invisible deficiencies must be communicated to Brinkman immediately upon discovery, yet ultimately within 30 days after delivery.

16.3 In the implementation of the contract, concluded with the buyer/principal, the variances tolerated will be those, which are deemed to be useful, essential or desirable by Brinkman. The weights and measures stated by Brinkman are approximate. Any legal action with respect to difference in weights and measures is precluded, unless the contrary results from the nature of the contract (art. 6.3).

16.4 Brinkman is competent to deliver an equal performance instead of the article to be delivered, to be judged from conditions on the date of delivery, unless the contrary results from the nature of the contract.

16.5.1 Brinkman will only accept liability and can only be made responsible for designs made by itself, so that Brinkman will therefore never be liable for defects to the objects carried out according to designs by the buyer/principal and/or by third parties, and also not, if information provided by the buyer/principal proves to have been incorrect or incomplete.

16.5.2 Brinkman is not in any respect legally bound to check the information referred to in 16.5.1 for correctness.

16.5.3 Furthermore, Brinkman is not liable for the quality of materials which are employed by Brinkman on request or on the recommendation of the buyer/principal, and also not for the applicability of these materials.

16.6 If, in a situation as provided for in 16.5.1., 2 and 3 damage occurs for the buyer/principal, this will be for his expense. Furthermore, the buyer/principal will be liable for losses sustained by Brinkman in connection with this.

16.7 If the goods to be delivered are to be employed outside the Netherlands, Brinkman's sole responsibility is, that the commodities to be delivered meet the technical requirements or standards that are laid down in laws or provisions of the country, where the commodities are to be employed, provided that, at the conclusion of the contract, the buyer/principal has given notice about the employment in the foreign country and the particular requirements involved in this. Any further technical requirements made by the buyer/principal with respect to goods to be delivered, and which differ from the usual requirements, must be explicitly mentioned at the conclusion of the contract.

### Article 17. Force majeure

17.1 If it is hindered in the execution or timely implementation of the contract, Brinkman has the right to postpone the implementation of the contract, or to consider the contract partly or entirely dissolved, at the option of Brinkman, without prejudice to the rights it is otherwise entitled to, and without Brinkman being legally bound to any indemnification or counter performance.

17.2 In this respect, under force majeure is understood any circumstance, independent of the will of Brinkman - even if it could be foreseen at the moment of the conclusion of the contract - in consequence of which the execution and/or timely execution of the contract can no longer reasonably be demanded by the buyer/principal, in any case included herein, war, revolution, danger of war, civil war, revolt, strike, exclusion of workmen, difficulties in transport, fire and/or interruptions in the business of or that of one or more of its suppliers or entrepreneurs, delayed delivery of timely ordered materials, raw materials and catalysts or parts, flood, storm, whirlwinds, hail, rain, fog, snowfall, glazed frost, disturbance of the traffic, interruption in the supply of energy and governmental measures.

17.3 In the event of force majeure, Brinkman is competent to partly or entirely dissolve the contract, without being legally bound to any indemnification in this connection, without legal intervention being required for this. This without prejudice to the obligation of the buyer/principal to pay for that already constructed or delivered and expenses incurred so far.

17.4 A contractual fine, set on the possible exceeding of the term of delivery, will only become payable if the exceeding can be attributed to a shortcoming for which Brinkman is accountable and if Brinkman is in default.

### Article 18. Reservation of property

18.1 The goods delivered by Brinkman will remain its property, until the buyer/principal has fulfilled all following obligations from any contract concluded with Brinkman:  
ü the counter performance with respect to the good itself or goods themselves delivered or to be delivered;  
ü the counter performance with respect to services or work performed or to be performed by Brinkman by virtue of a contract;  
ü the possible claims on account of non-compliance on the part of buyer/principal of a contract concluded with Brinkman.

18.2 Goods delivered by Brinkman, that fall under reservation of property by virtue of paragraph 1, may only be sold as part of the usual business activities. The buyer/principal has not the right to hypothecate these goods or to establish any other right on them.

18.3 If the buyer/principal does not fulfil his obligations towards Brinkman or that there is a founded fear that he will not do this, Brinkman is entitled to remove goods delivered which are under the reservation of property as referred to in paragraph 1, from the buyer/principal or from third parties, who keep the good for the buyer/principal, or to have them removed. The buyer/principal is obliged to fully cooperate in this, under penalty of a fine of 10% of the amount owed by him for every day with a minimum of NLG41,000.

18.4 If third parties intend to establish or assert any right on the goods delivered under reservation of property, the buyer/principal is obliged to inform Brinkman about this as quickly as can reasonably be expected.

18.5 The buyer/principal undertakes, at first request by Brinkman:  
ü to insure the goods delivered under reservation of property against damage on account of fire, explosion and water and against theft and to keep them insured and to submit the policy of this insurance for perusal;  
ü to hypothecate all claims to insurers with respect to the goods delivered under reservation of property to Brinkman in the way as prescribed in article 3: 239 B.W. (= Burgerlijk Wetboek < Dutch Civil Code >);  
ü to pledge the receivables to Brinkman, which he acquires towards his buyers when reselling goods delivered by Brinkman under reservation of property in the way as prescribed in article 3: 239 B.W. (= Burgerlijk Wetboek < Dutch Civil Code >);  
ü to mark the goods delivered under reservation of property as the property of Brinkman and to keep them marked as such;  
ü to cooperate in other ways in all reasonable measures, Brinkman wishes to take for the protection of its right of property with respect to the goods delivered by it, and which do not unreasonably hinder the buyer/principal in the performance of his business activities.

### Article 19. Risk

19.1 The risk for the good to be delivered by Brinkman is for the account of the buyer/principal from the moment of the delivery, as referred to in article 6 of these conditions.

19.2 If, at the date of delivery the buyer/principal is in default, and Brinkman is not able to perform as a result of this, the risk for the good to be delivered by Brinkman passes on to the buyer/principal, from the date that was fixed for delivery, without prejudice to all other rights Brinkman is entitled to by virtue of the law or the terms of delivery.

19.3 On arrival of the goods, the buyer/principal must convince himself of the condition, in which the goods are. If it turns out, that goods or materials have sustained damage, the buyer/principal must take all necessary measures to obtain indemnification from third parties.

#### Article 20. Dissolution

- 20.1. In the events, when:
- the buyer/principal is declared in the state of bankruptcy or has applied for suspension of payment;
  - part or all of the capital of the buyer/principal is attached;
  - the buyer/principal dies or is put under legal restraint;
  - the buyer/principal does not meet any commitment he is charged with by virtue of the law or these conditions;
  - the buyer/principal fails to pay an invoice amount or a part of this within the term fixed for this;
  - the buyer/principal proceeds to strike, liquidation or conveyancing of his business or a significant part thereof, or proceeds to change the purpose of his business, Brinkman has, on account of the sole occurrence of one of the circumstances mentioned, the right to partly or completely dissolve the contract, without injunction or any proof of default and without any legal intervention being required. Brinkman will then also have the right, without injunction or any proof of default and without any legal intervention being required, to postpone the execution of the contract, demand security for payment, to remove materials and tools from the works, or to, at the option of Brinkman, partly or completely dissolve the contract, without Brinkman being legally bound to any indemnification or otherwise.
- 20.2. If Brinkman suspends the execution of the contract, and as yet completes the work later on, the buyer/principal shall be legally bound to indemnify Brinkman for the losses, sustained by Brinkman on account of this.
- 20.3. If the contract is dissolved by Brinkman, the buyer/principal will be legally bound to pay it the complete contract sum/purchase price, after deducting the purchase price of materials that have not been used and the wages that have not been paid by Brinkman on account of non- on incomplete fulfilment of the contract, all this according to calculations by Brinkman, which will be legally binding on the buyer/principal. In the event, when the contract is dissolved by Brinkman, if the buyer/principal, after having given an order to Brinkman, thereupon charges another party with the work or, as the case may be, buys the purchased good from another seller, the indemnification to which Brinkman is entitled on account of this default committed by the buyer/principal, will be fixed at 20% of the contract sum, without prejudice to the right to claim full indemnification, should this amount be exceeded.
- 20.4. The buyer/principal explicitly relinquishes the rights assigned to him in art. 6:88-c and 6:265 B.W.  
(= Burgerlijk Wetboek < Dutch Civil Code >).

#### Article 21. Evidence

- 21.1. For the determination of the extent of the obligations of payment of the buyer/principal, the administrative data of Brinkman are decisive, subject to evidence to the contrary to be adduced by the buyer/principal.
- 21.2. Subject to evidence to the contrary being adduced, the numbers, weights and measures stated at the invoice or contract of carriage are considered to be correct between the buyer/principal and Brinkman.
- 21.3. If, by virtue of a contract concluded with Brinkman, a letter is sent or a communication is made by Brinkman to the buyer/principal, the legal consequence envisaged with it arises at the moment of delivery at the post office, even if the letter or communication should not be received or be taken delivery of by the addressee.

### D. Special conditions with respect to the delivery of protectors and other harmful substances

#### Article 22. Warning

##### 22.1. General

In the event, when a contract which is governed by these General Conditions involves the delivery of pesticides or herbicides and/or other harmful substances, the sections A, B, and C apply. In the event of discrepancy between these stipulations and the stipulations in section E, the special stipulations mentioned in this section shall prevail. Should the applicability of one of stipulations stated in this section not be legally accepted, this will leave the effect of the stipulations in the other sections of these conditions intact.

##### 22.2. Warning

The trade in and the application of pesticides and herbicides and other harmful substances requires a substantial degree of supervision and expertise. The buyer/principal will have to acquire knowledge about the special properties of this product and has the obligation to observe the regulations drawn up by Brinkman or the manufacturer with respect to transport, installation and treatment of the products delivered by it. Brinkman is competent to alter these regulations as often as deemed necessary by it to guarantee correct handling of the goods delivered by her.

#### Article 23. Obligation to provide information buyer/principal

- 23.1. Unless Brinkman, having performed a study of the business of the buyer/principal and on the basis of advice submitted in writing in writing, recommended a particular method of protection or the use of a protector specifically named by Brinkman, Brinkman is under no obligation to inquire into the conditions under which the buyer/principal wishes to employ the protectors or other harmful substances.
- 23.2. Unless explicitly agreed upon otherwise, Brinkman may assume, that no other products are produced in the business of the buyer/principal than those stated at the time the order was granted by buyer/principal.

#### Article 24. Reclamations

- 24.1. Reclamations with respect to the soundness of a protector must immediately be communicated by the buyer/principal to Brinkman and must be confirmed to Brinkman in writing within 2 days.
- 24.2. In the event of reclamations, the buyer/principal has the obligation to observe the instructions of Brinkman, whereas defaulting on this shall result in the cancellation of any claim by the buyer/principal by virtue of reclamation.
- 24.3. If, after reclamations by the buyer/principal the instructions of Brinkman have been obeyed, Brinkman, at its option, shall either credit the product delivered, or deliver new protectors free of charge, or an equivalent alternative, unless Brinkman may reasonably assume, that the cause for results not occurring is to be found in a condition which is for account or risk of the buyer/principal, subject to evidence to the contrary to be adduced by the latter.
- 24.4. If reasonable result fails to occur with a particular method of protection, recommended by Brinkman, and the buyer/principal has, after reclamations, obeyed the instructions by Brinkman, Brinkman, at its own option, will either supply a new product or an equivalent alternative free of charge, or credit the invoice in question, if the method of pollination or, as the case may be, protection recommended by Brinkman is considered non-active according to the scientific standards current at the time the recommendation was given.

#### Article 25. Limitation of liability

- 25.1. The contractual liability of Brinkman for losses resulting from the deployment by the buyer/principal of protectors delivered by Brinkman is limited to 100% of the net invoice amount.
- 25.2. Should, on the basis of exceptional circumstances, the exoneration towards the buyer/principal, stipulated in the first paragraph of this article, be unreasonably encumbering, a maximum obligation to indemnify amounting to 200% of the net invoice sum with a maximum of DFL 50.000,00 shall apply.

### E. Special conditions concerning contracting for work

#### Article 26. General

26. In the event, when Brinkman has concluded a fixed-price contract with the buyer/principal, the following conditions shall apply. The General Conditions as mentioned in the sections A, B, C and F apply to this contract. In the event of discrepancy between these conditions and the conditions in section E, the special conditions mentioned in this section will prevail. Should the applicability of one of stipulations stated in this section not be legally accepted, this will leave the effect of the stipulations in the other sections of these conditions intact.

#### Article 27. Risk materials

Materials, as soon as they have arrived at the land to be cultivated or the building site, shall be for risk of the buyer/principal. The buyer/principal is liable for all damage caused to these materials after arrival of the materials (such as damage resulting from fire and water, theft or misappropriation). The buyer/principal has the obligation to adequately insure himself against aforementioned risks. During assembly and subsequent execution, the risk for that assembled is also for account of the buyer/principal. The buyer/principal is legally bound to conclude the necessary insurances with respect to that assembled, this immediately after commencement of the assembly.

#### Article 28. Payment

The buyer/principal is to proceed with payment (invoice), at all times within a period of eight days after date of a written request for this purpose by Brinkman, without any deduction or settlement of debts. Unless otherwise agreed upon by parties, the contract price will comprise the following terms of payment:

- ü 10% when the contract is concluded;
- ü 50% at commencement of the assembly;

û 40% on completion, or if the installation has been put into operation by the buyer/principal before this date, at the date of putting into operation.

#### Article 29. Assembly

With respect to assembly, the stipulations in section C of article 8 apply accordingly.

#### Article 30. Completion

30.1. The buyer/principal undertakes to ensure that the operations to be carried out by Brinkman can be carried out at the times desired/indicated by Brinkman. He undertakes to ensure that all required auxiliary tools are at the disposal of Brinkman and further, that all materials and the like supplied by Brinkman can be stored in such places, and in such a way, that these materials shall not sustain any damage. Any damage resulting from defective storage will be for account of buyer/principal.

30.2. Inspection occurs within fourteen days following the day on which, as shown from a communication by Brinkman to the buyer/principal, the work has been completed. The day and time of the inspection is fixed by Brinkman in consultation with the buyer/principal. It is allowed for the buyer/principal to have himself accompanied by an expert at the inspection. The completion is deemed to have occurred if the installation or the work has been installed in fully complete operational condition and if the installation, after testing in the context of the inspection, has proved to meet requirements to be made and has been approved by the buyer/principal at that inspection and testing. Minor defects shall not give cause for withholding the approval on the part of the buyer/principal. Brinkman is bound to repair these defects as quickly as possible.  
The buyer/principal has the obligation to give Brinkman the opportunity to do so.

30.3. In the event that the buyer/principal detects the defects to the work at the inspection stipulated in paragraph 2 of this article (not being minor defects as mentioned in paragraph 2), the buyer/principal will have the obligation to enable Brinkman to repair the detected defects at a reasonable point in time to be fixed by mutual arrangement. After repair, a new inspection will occur. At the re-inspection, other defects than those detected at the first survey/taking up shall not give cause for renewed withholding of approval. The work is deemed to have been completed immediately after re-inspection by Brinkman and approval of this inspection by the buyer/principal.

30.4. Irrespective of that stipulated in the sections 1 up to and including 3 of this article, the inspection is deemed to have occurred, if the work performed has factually been made available by Brinkman to the buyer/principal and this has been put into operation by the buyer/principal, or in the event that the buyer/principal does not respond to Brinkman's request for inspection of the work.

#### Article 31. Additional and less work

31.1. The contract includes the competence to charge separately for performed additional work.

31.2. The settlement of additional or less work will be effected as quickly as possible after this is known. Brinkman may send an invoice to the buyer/principal immediately after the size of the amount payable for additional work has been brought to its notice. That stipulated in article C.11. applies accordingly.

31.3. When, in consultation with the buyer/principal, after conclusion of the contract, the size of the installation or that assembled increases or decreases relative to what was originally stipulated, Brinkman will have the right to charge the buyer/principal the realistic additional price arising from this, or to deduct the expenses actually saved on account of this from the contract sum/purchase sum payable, so that Brinkman will not be legally bound to decrease the original contract sum/purchase sum by an amount that is proportional to the increase or decrease of the original object.

31.4. In the event of less work, Brinkman is competent to charge the buyer/principal an indemnification of 15% over the contract value of the less work.

31.5. Any alterations arising in the work, unless due to a special order of the buyer/principal, either resulting from facilities that have proven to be necessary to prevent unforeseen circumstances or to solve difficulties that have arisen, shall be considered additional work, when these entail additional expenses and, insofar as they entail less expenses, shall be considered less work in the sense of this article.

31.6. That stipulated in article 1646 of the *ôBurgerlijk Wetboekö* < Dutch Civil Code > (Book 7 A) does not apply to the contract between the buyer/principal and Brinkman.

31.7. The stipulations in the sections A up to and including C apply accordingly, unless this section proves the contrary.

### F. Special provisions with respect to the application of computer software

#### Article 32. Intellectual property and right of use

32.1. A right of use contract concluded between Brinkman and the user, does not on any account imply the complete or partial transfer of copyrights or other intellectual property with respect to the software.

32.2. According to the right of use, the user is authorized to use the software on one computer, on one processor and one location at the same time.

32.3. If and insofar as no protections against illegal copying have been incorporated in the software, the user will be allowed to make one spare copy of the software, in which all distinguishing marks, such as trade marks, logos and brand names, and also copyright notes, user's name and -number must be copied identically. Mutatis mutandis the aforementioned regulation applies to the copy on the harddisk. In that case, the copy of the software made available by Brinkman shall be the spare copy.

32.4. The user will not be allowed to:  
a. copy the software partly or completely, in whatever way, irrespective of method or medium;  
b. remove or alter distinguishing marks such as trade marks, logos and brand names, copyright notes and/or user's name and -number (or have these removed or altered);  
c. to partly or entirely alter, adapt, convert, decompile, de-assemble, simulate, or process the software in any other way, to apply reverse engineering or to have this performed by third parties;  
d. to partly or completely let out the software, to alienate it, to transfer it as a security, or, under whichever title, make it available to third parties, to submit it for perusal or make it accessible;  
e. to partly or entirely transfer the software to another computer in an electronic way or by using means of telecommunication, or to use it on another computer which is part of, or linked to a network;  
f. to take the software outside the Netherlands (or have it taken).

32.5. The user shall take all measures that are reasonably necessary to prevent the software from falling into the hands of third parties.

32.6. In contradiction to that stipulated in article 32, paragraph four, letter e, Brinkman is prepared, under conditions to be agreed upon further in writing, to allow network applications. The user is to contact Brinkman for this purpose.

#### Article 33. Guarantee

33.1. If, due to damages to the diskette(s) for which Brinkman is accountable, the action of the software is disrupted, the user will have the right to exchange the software diskette(s) within three months after delivery.

33.2. Differences in the software with respect to the specifications stated in the manual will be inserted in an update list by Brinkman. Brinkman will aim at repairing these differences in a subsequent version, in a priority to be determined by Brinkman.

33.3. We explicitly disclaim any right of guarantee, repair or taking back. Thus, Brinkman guarantees neither the correctness with respect to contents and completeness of the software nor the data which have been acquired by means of this software.

#### Article 34. Policy for updating

34.1. Brinkman aims at adapting the software, if this is deemed desirable by Brinkman with respect to relevant developments with respect to contents or legal aspects, or in connection with the repair of defects, or in the event of improvements of a software-technological nature.

34.2. In addition to the one-time fee for the right of use, the user will owe an annual amount to Brinkman. The user will then be sent a free copy of the adapted version.

34.3. The initial term of subscription as referred to in the previous paragraph is 24 months. The amount payable during the first twelve months of this period will be nil.

34.4. After expiration of the period of twelve months referred to in paragraph 3, this period will each time automatically be extended by a twelve month's period.

34.5. The subscription can exclusively be cancelled in writing, by the end of the period agreed upon, until three months before the end of this period at the latest.

34.6. To the adapted versions, all conditions of this contract apply.

#### Article 35. Safeguarding

35.1. Brinkman will safeguard the user against any legal action by third parties insofar as this is based on the assertion, that the software violates a copyright valid in the Netherlands, provided that the user will inform Brinkman immediately in writing of the legal action and will leave dealing with the matter exclusively to Brinkman.

35.2. If legal action has been taken, or if, in the judgement of Brinkman, there is a possibility for this, Brinkman will have the right, in its judgement, to obtain the right on behalf of the user to continue to use the software, or to adapt it or exchange it in such a way that no violation as referred to here is committed, or, if this is not reasonably feasible in the judgment of Brinkman, to take back the software, copies, if any, and all that has been made available under this contract, while crediting an amount to be fixed by Brinkman.

#### Article 36. Liability

36.1. The data, obtained by means of this software are only indicative by nature and no rights can be derived from these by the user with respect to correctness or completeness. The choice made for the software, the implementation and the method of use are for risk of the user.

36.2. With the exception of intent or gross culpability, neither Brinkman nor the holder of the copyrights, nor the third parties employed by him or their employees shall be liable for damage related to the use, the non-capability to use, or wrong use of, the software. On no account, the natural persons and/or legal entities referred to here shall be liable for industrial losses or other consequential losses.

36.3. The user will safeguard the natural persons and/or legal entities referred to in the previous paragraph against third-party claims with respect to losses referred to in this article.

36.4. The overall liability of the natural persons and/or legal entities referred to in this article shall in any case be limited to the amount of the purchase price, exclusive of V.A.T. For the legal effect of this article, all natural persons and/or legal entities referred to here shall be contracting parties.

#### Article 37. Dissolution and termination

37.1. If the user does not, not adequately or not timely fulfil any obligation which might ensue for the user from the contract, and also in the event, when bankruptcy or suspension of payment of the user might be applied for or pronounced, or a resolution would be made on the closing down or liquidation of the user's business, he will be deemed legally in default, and Brinkman will have the right to partly or completely dissolve the contract without any proof of default or legal intervention being required for this, or to suspend the execution of it.

37.2. In the event of dissolution or cancellation of the contract, the user will have the obligation, at the first claim by Brinkman, to submit all that has been made available to the user in connection with the contract, including copies, if any, to Brinkman, and/or grant admission to personnel of Brinkman, in order to remove the software from a harddisk and to collect the other products, including copies, if any, made available in connection with the contract.

37.3. In the event of infringement, violation or non-compliance with any stipulation with respect to the right of use (article 37 paragraph 2) the user will owe Brinkman an immediately payable fine amounting to NLG 2,000.00 for each event, which cannot be balanced against other amounts, without prejudice to the rights otherwise due to Brinkman by virtue of the law or the contract. Brinkman has the right to verify correct application of these provisions.

37.4. User is not entitled to dissolving the contract.

### G. Final provisions

#### Article 38. Applicable law - Viennese Purchase Contract

To any contract between Brinkman and the buyer/principal, Dutch Law shall be applicable. The applicability of the Viennese Purchase Contract is precluded.

#### Article 39. Competent judge

Contrary to the legal regulations with respect to the competence of the Civil Judge, Brinkman is entitled to have a writ served before the competent Judge in Ås-Gravenhage. Primary competence falls to Brinkman to bring a case before the legally competent Judge.

#### Article 40. Translations

These conditions have been drawn up in both the Dutch, the English, French and German language and filed with the court registry of the District Court in Ås-Gravenhage. In the event that a discrepancy should exist between the Dutch text on the one hand, and the English, French or German text on the other, the Dutch text shall be legally binding.

#### Article 41. Amendments

41.1. Brinkman is entitled to amending these conditions without giving prior notice. The amended conditions become effective on the date stated in the amendment resolution, provided that the amended conditions have been filed with the court registry of the District Court in Ås-Gravenhage before the envisaged effective date. The amendment resolution does not need to contain the complete text of the General Conditions.

41.2. If an order was granted before the date on which the aforementioned amendment becomes effective and the confirmation of order was sent after this date, the conditions valid at the moment of granting the order shall be valid.