

GENERAL TERMS OF SALE AND DELIVERY SWEDICE

PART I. GENERAL

Article 1. Definitions

In these general terms of sale and delivery the definitions and expressions used are defined as follows:

- Swedice: Swedice B.V. and all its affiliated foundations and firms;
- Conditions: These general terms of sale and delivery;
- Client: The natural person or legal entity with whom Swedice entered into an agreement;
- Agreement: The agreement between Swedice and the Client;
- Parties: Parties present at the agreement to be concluded.

Article 2. Applicability

1. Any agreement between Swedice and client, regardless of the content and purpose of this agreement, shall be governed exclusively by these conditions, except other mandatory provisions of law. Deviations shall be expressly agreed upon in writing with Swedice.
2. The general terms and conditions applied by clients and/or third parties do not apply and are expressly rejected by Swedice, unless expressly accepted in writing by Swedice.
3. Should any provisions of the terms and conditions become null and void, the remaining provisions shall apply in full and remain in force. In addition, any provision of these terms that is void or annulled shall be replaced by a valid provision in which the purpose and intent of the void or annulled provision are taken into account as much as possible.
4. In case of conflict between provisions in agreement, conditions or annex, the following ranking shall apply:
 1. Agreement
 2. Annex
 3. Conditions

Article 3. Offers

1. All offers by Swedice are free of engagement, unless otherwise specified.
2. Offers by Swedice are based on the information provided by client and performance under normal circumstances and during normal working hours.
3. Offers by Swedice are valid for 30 days after the date the offer was made, unless otherwise specified. If client does not accept the offer in writing within this period, the offer shall be cancelled and the client shall no longer be able to appeal to it.
4. As long as the offer has not been accepted by the client, Swedice is authorised to adjust the offer. If the offer is adjusted by Swedice, Swedice will notify the client in writing.
5. If the client requires technical requirements and/ or standards from the goods to be delivered which differ from the normal requirements and/or standards, these different technical requirements and/or standards should be made clear in writing to Swedice by the client prior to the offer. Swedice can then take into account the different required technical requirements and/or standards in preparation of the offer.
6. If the information provided by the client is [proved] incorrect or incomplete, Swedice is authorised to withdraw or adjust the offer, or, after acceptance of the offer by client and/or realisation of the relevant agreement, to adjust the prices within this framework or to immediately terminate the relevant agreement.

Article 4. Prices

1. The prices mentioned in an offer are exclusive of assembly, VAT and other levies imposed by the government, unless otherwise indicated. The rates are in Euros. The prices are subject to typographical errors. For the consequences of typographical errors, no liability is accepted.
2. An interim change in material costs, legal fees and/ or change or indexing respectively of the level of wages and costs can be passed on to the client by Swedice. Indexing of the level of wages and costs always means an adjustment in conformity with the most recent price index publicised by the Central Bureau of Statistics CLA wages for professional services.
3. Swedice is entitled to raise the rates. Swedice will notify the client at least 1 month in advance of any changes in rates. In case of price increase, except an increase in accordance with abovementioned article 4.2, client has the right to terminate in writing within 7 days after notification of the rate change before the date mentioned in the notification of Swedice when the price or changes in rate would take effect.

Article 5. Agreement

1. If the client accepts the offer by Swedice as defined in article 3 of these conditions, Swedice shall send an order confirmation to the client, which must then be signed and returned by the client. Only after receipt by Swedice of the order confirmation signed by the client, the agreement will be established.
2. Work for which no offer or order confirmation is sent due to its nature and/or scale, the invoice sent by Swedice is also considered an order confirmation. In these cases, the agreement will be established when Swedice [starts to] implement the assigned work.
3. For the size and nature of the obligations of Swedice the text of the order confirmation/ invoice is binding. If the client does not agree with the content of the order confirmation/invoice, they shall notify Swedice of this within five [5] working days after the date on which the order confirmation/invoice was sent. After the expiry of this term, the client is deemed to have accepted the contents of the order confirmation/invoice.

Article 6. Deliveries, terms and deviations

1. Delivery of goods shall occur at the place where these goods shall be assembled, unless parties have agreed otherwise. From the moment of delivery to client by Swedice or any third parties engaged by it on the basis of a purchase, lease or other agreement, the goods are for the risk of the client.
2. The purchased or rented goods must be collected by the client the moment the goods are delivered or made available. If client refuses to collect or fails to provide information or instructions necessary for the delivery, the goods will be stored at the expense and risk of the client. In that case, client is due all additional costs, including in any case the storage costs, to Swedice.
3. Swedice is entitled to deliver sold goods in parts. If goods are delivered in parts, Swedice is entitled to invoice every part separately.
4. The delivery terms mentioned by Swedice are no deadlines, unless otherwise expressly agreed upon in writing. The single exceeding of a term does not bring Swedice in default.
5. If Swedice exceeds a period, for any reason, Swedice is not obliged to reimburse any damage the client may suffer due to this or any penalty stipulated by the client, nor does the client obtain the right to terminate the agreement or to suspend its obligations towards Swedice.
6. Swedice is in no way bound to terms that cannot be met due to circumstances beyond its control that have occurred after the establishment of the agreement.
7. Swedice is authorised to deliver goods that differ from those described in the order confirmation, including in terms of material, dimensions, and colouring. If Swedice makes use of this authorisation and delivers an item that deviates substantially from that described in the order confirmation, the client is authorised to rescind the agreement within fourteen days after the client discovered, or could reasonably have discovered the deviation, without Swedice then being obligated to compensate for any damage incurred by the client or any penalties stipulated by the client. The aforementioned authorisation of the client to rescind the agreement only arises after the client has notified Swedice of default and if Swedice is in default.
8. The client is not entitled to dissolve the agreement as described in Article 6.7 if it concerns changes to the goods to be delivered, the packaging, or the accompanying documentation required to comply with applicable statutory regulations, if it concerns minor changes to the goods or if it concerns changes that constitute an improvement.

Article 7. Retention of title

1. The goods delivered by Swedice remain the property of Swedice until the client has met all its obligations arising from all agreements concluded with Swedice, including:
 - the contribution[s] relating to delivered or to be delivered goods;
 - the contribution[s] relating to services provided or to be provided by Swedice pursuant to purchase agreement[s];
 - any claims for non-compliance or failure by client of [an] agreement[s].
2. In the event that the client fails to fulfil its obligations or if there is reasonable ground to believe that such failure has occurred, Swedice is entitled, without formal notice, to repossess or cause to be repossessed the delivered goods, to which the retention of title referred to in article 7.1 applies, from the client or from third parties holding the goods for the client. In such an event, Swedice shall be entitled to rescind the agreement between the parties without judicial intervention, without prejudice to the right of Swedice to compensation for direct and indirect damage, loss of profit and interest. The client must give Swedice the opportunity to take back the delivered goods and cooperate fully therewith, under penalty of a fine of 10% of the amount due for each day that the client is negligent.
3. Client is not authorised to pledge the goods under retention of title or [have] any other [limited] right established on it. If third parties wish to establish or assert any right to the delivered goods under retention of title, client is obliged to notify Swedice of this in writing by return.
4. Client is only entitled to resell the goods subject to the retention of title within the framework of the normal course of business.
5. Client is obliged to insure and keep insured the goods delivered under retention of title against fire, explosion and water damage, against damage as a result of vandalism and against theft. Client shall show this [these] insurance policy [policies] to Swedice at the first request.

6. Client is also obliged at the first request of Swedice to immediately and unconditionally cooperate with:
- pledging under article 3:239 Dutch Civil Code of all claims concerning the delivered goods by Swedice subject to retention of title;
 - pledging under article 3:239 Dutch Civil Code all claims client receives towards his buyer[s] when reselling delivered goods by Swedice under retention of title;
 - the designation of delivered goods by Swedice under retention of title as property of Swedice;
 - taking all reasonable measures in any other way that Swedice wishes to make [have made] for the protection of her retention to title regarding the delivered goods subject to retention of title and which do not unreasonably interfere the client in its normal course of business.

Article 8. Delivery

1. If the delivered goods by Swedice must be assembled, the work shall be considered delivered when it is fully performed or assembled and the client is notified of this verbally or in writing. The work will also be considered performed as soon as the work has actually been used by or on behalf of the client.
2. If any part without fault of Swedice cannot be delivered simultaneously with the completion of the entire work, the delivery shall be able to take place regardless.

Article 9. Obligations client

1. Client shall notify Swedice without delay and in writing of any changes in name, [postal] address, e-mail address, VAT number and bank account number.
2. Client is obliged to provide all information and documents, which Swedice considers necessary for the correct execution of the assignment, timely in the form as designated by Swedice and in the manner as desired by Swedice.
3. Client is obliged to indicate on a drawing the place where the delivered goods by Swedice must be assembled. If client has not provided Swedice at least 3 days before commencement of the work with drawings that include cables, underground and overhead wires and such, Swedice can never be held liable for damage that might arise from this, nor for any resulting consequences.
4. Client is obliged to immediately notify Swedice concerning facts and circumstances that may be of interest relating to the performance of the assignment.
5. Client is responsible for accuracy, completeness and reliability of the information and documents provided to Swedice.
6. Client must take care of free supply of energy [including but not limited to gas, electricity and water] that are required during the execution of the work.

Article 10. Obligations Swedice

1. Swedice determines the way in which the extended assignment is performed, taking into account any wishes expressed by the client as much as possible.
2. Swedice relies on the information provided by the client during the execution of the work.
3. Swedice will execute the service carefully and skilfully, in accordance with written agreements and procedures established with the client.

Article 11. Betalingsvoorwaarden

1. All invoices will be paid by the client in euros by payment or transfer in accordance with the terms of payment mentioned on the invoice or any other terms of payment as agreed upon in writing. In the absence of specific terms of payment the client will pay within 30 days after the date of invoice.
2. Client is not entitled to suspend or settle, regardless of the name or estimate or for any other reason, nor is the client entitled to any discount.
3. If the payment within 30 days after date of invoice is not forthcoming, the client is legally in default without requiring a separate notice.
4. If the client fails to pay the invoice timely and completely after the payment of the invoice, the client is due an interest of 1% per month, unless the legal [commercial] interest is higher, in which case the legal [commercial] interest is due. Interest is calculated on the entire invoice amount, even if the invoice is paid in part, until the full invoice amount has been paid.
5. In the event of a late payment the client is obliged to, in addition to the payable amount multiplied by the interest defined under article 11.4, fully pay both extrajudicial and judicial costs, including the costs for lawyers, bailiffs and collection agencies. The extrajudicial costs amount to at least 15% of the amount the client is due to Swedice.
6. The claim for payment is due immediately in case the client is declared in state of bankruptcy, requests suspension of payment, has assets attached, client deceases or goes into liquidation or is disbanded.
7. In case of a collectively given assignment each client is severally liable for payment of the invoice amount.
8. The client cannot transfer rights and obligations it has with regard to Swedice. This provision has effect under property law.

Article 12. Prepayment / security / offset

1. Swedice is entitled at all times to demand prepayment or security, prior to its performance or in order to proceed with its performance respectively. Should the client fail to make the requested advance payment or provide security, the obligation incumbent upon Swedice shall expire, without prejudice to Swedice's right to compensation for all direct and indirect damages, costs, and interest incurred by the client.
2. Swedice is entitled at all times to offset claims of Swedice – due or not – with claims the client has to Swedice under the agreement. To the extent that any permission on the part of the client is required, this permission shall be deemed unconditionally and irrevocably granted to Swedice.

Article 13. Termination

1. Swedice can wholly or partially suspend or terminate the agreement between parties immediately without notice and without judicial intervention in writing if:
 - a. the client – whether or not temporarily – is granted moratorium, is declared in state of bankruptcy, the business of the other party is liquidated or terminated, a [legal] debt restructuring settlement is declared applicable;
 - b. the client loses the disposal of its assets by attachment, receivership or otherwise;
 - c. the authority [in the business] of the client changes;
 - d. after the establishment of the agreement Swedice becomes aware of circumstances that provide Swedice with good grounds to fear that the client will not fulfil its obligations;
 - e. Swedice has requested client to pay in advance and/or provide security for the compliance and the prepayment and/or security does not occur.
 - f. Circumstances occur relating to persons and/or material that Swedice usually employs or tends to employ in the performance of the agreement, which are of such a nature that the performance of the agreement becomes so inconvenient and/or disproportionately expensive that compliance with the agreement in reasonableness can no longer be demanded..
2. The client is liable for all damage suffered by Swedice in connection with suspension or dissolution, unless suspension or dissolution occurs by virtue of Article 13.1 sub f.
3. If client at the moment of termination already received performances of the agreement, these performances and accompanying payment obligations shall not be undone, unless Swedice is in default of that performance. Amounts that Swedice has invoiced before the termination relating to performances or deliveries already received for the agreement, remain due without prejudice of that which was determined in compliance with the previous sentence and becomes payable immediately after termination.
4. Rights and obligations from the agreement between Swedice and client, which by their nature and content are intended to last, remain in full force after termination of the agreement.

Article 14. Outsourcing

1. Swedice is at all times entitled to subcontract the execution of the assigned work, partially or wholly, to third parties without the prior consent of the client.

Article 15. Changing of assignment

1. All changes in the assignment, whether by order of client, or due to the fact that through whatever circumstances another execution is required, shall be considered additional work if more costs are attached. Additional work shall be charged to client on labour costs per hour and based on material costs.
2. If Swedice, due to circumstances of which it is unaware at the time of the offer, must perform more work than agreed, or must perform work under circumstances more difficult than those known at the time of entering into the agreement, Swedice shall be entitled to charge the client for the additional costs thereby incurred. These costs will be charged to the client on labour costs per hour and based on material costs.

Article 16. Liability

1. The total liability of Swedice, for any reason, shall be limited to the compensation of immediate damage to the maximum amount paid by the liability insurer of Swedice. In the event that the liability insurer of Swedice does not pay out, the total liability of Swedice shall be limited to 25% of the amount of the price paid on the basis of the agreement for the relevant (partial) assignment resulting in damage.
2. Liability of Swedice for indirect damages, including but not limited to consequential losses, loss of profit, missed savings, loss of data and damages due to business stagnation and idleness, is excluded at all times.

3. Direct damage exclusively means:
 - material damage to or defective or non-functioning goods, software and equipment;
 - material damage to other properties of client and/or third parties;
 - the demonstrable actual costs the client made to make Swedice answer to the performance of the agreement.
 - Demonstrable reasonable costs, incurred to establish the cause and extent of the damage, to the extent the establishment relates to the direct damage within the meaning of these conditions.
4. The condition for the occurrence of any entitlement to compensation is always that the client reports the damage to Swedice in writing as soon as possible (no later than fourteen days) after its occurrence.
5. The client indemnifies Swedice and Swedice employees against all third-party claims related to the (execution of the) agreement, all in the broadest sense of the word.
6. Swedice accepts no responsibility whatsoever for goods not assembled or delivered by or on behalf of Swedice.
7. Swedice accepts no responsibility for defects of goods delivered and/or installed to which the client has made modifications and/or repairs.

Article 17. Force majeure

1. In case of force majeure, which in any case includes malfunction or failure of Internet, malfunction or failure of the telecommunication infrastructure, power failures, civil unrest, mobilisation, war, traffic jams, strikes, lockouts, business malfunctions, stagnation in delivery, fire, floods, import and export barriers and in case Swedice through its own suppliers, regardless of the reason, shall be unable to deliver in which case fulfilment of the agreement in reasonableness cannot be expected of Swedice, the performance of the agreement shall be suspended, or the agreement shall be terminated when the force majeure lasted more than ninety days, without any obligation to pay compensation.

Article 18. Intellectual property

1. All rights of intellectual property on all software developed or made available pursuant to the agreement such as analyses, documentation, reports, offers, as well as preparatory material thereof lie with Swedice or its licensors. Client acquires only the right of use and power that are under these conditions or otherwise expressly granted.
2. Client will not multiply or copy the software and/ or other materials, nor will the client allow third parties to inspect them.
3. Client will return the software and/or other materials at the first request of Swedice.
4. The client is not entitled to delete or change any indication of copyrights, trademarks, trade names or other rights of intellectual property from the works mentioned in the first paragraph.
5. Swedice grants the client the nonexclusive right for the use of the developed or made available reports, documentation, offers, as well as preparatory material thereof pursuant to this agreement. Client shall strictly comply with the restrictions of use as agreed between parties. The right of use is not transferable.

Article 19. Confidentiality

1. Client is obliged to secrecy regarding all confidential information received from Swedice. Client shall also impose this obligation on its employees and any engaged third parties and their employees in the implementation of the agreement between parties.
2. In the event that the client is culpably negligent in the implementation of this article, it shall incur a penalty of €50,000 per event, payable immediately and without judicial intervention, without prejudice to all further rights of Swedice, including the right to fulfilment and/or compensation for all direct and indirect losses suffered by Swedice.

Article 20. Reclamations

1. Client must [have] examine[d] the purchased or otherwise installed goods upon delivery or as soon thereafter as possible. The client must determine whether the delivered answers to the agreement, more specifically:
 - whether the correct goods have been delivered;
 - whether the delivered goods correspond quantitatively to whatever was agreed upon;
 - whether the delivered goods meet the agreed upon quality demands or – if absent – the demands that can be made for normal use and/or commercial purposes.
2. Visible defects shall be reported to Swedice in writing within 14 days after delivery or completion. Nonvisible defects shall be reported to Swedice in writing within 7 days after discovery at the latest, or at the latest within three months after delivery or completion. In failing this, client has no right to repair, replacement or compensation.
3. The report of a defect shall contain a description of the discovered defect as detailed as possible.
4. If it is established that there is indeed a defect and this defect has been reported to Swedice timely and correctly and in writing, Swedice is entitled to repair the defect within a reasonable term as desired or to replace the defect good or fulfil replacing compensation to the client. The obligation of the client regarding payment and purchase and acceptance of orders remains. Goods can only be returned after prior written permission by Swedice.

5. If it is established that client has wrongly complained, the costs that have resulted on the part of Swedice, including the costs that originated relating to the examination of the complaint, will be charged entirely to the client.

Article 21. Licenses

1. The client shall, at its own expense, arrange for the necessary permits, approvals, exemptions, or amendments in connection with the delivered item ("Permits") and inform Swedice in a timely manner of regulations with which Swedice must comply. Client and Swedice [if Swedice is notified on time, i.e. well before the start of the work, of the requirements in writing] are severally responsible for the fulfilment of the requirements laid down in the licence relating to the delivered.
2. Swedice shall only be responsible for installation and assembly in accordance with permits, and never for use in accordance with permits.
3. The licences referred to in Article 21.1 must not be revocable any later than three months before the delivery date stated in the agreement. It is at the expense and risk of the Client if the permits are not irrevocable on the delivery date and the item to be delivered cannot be put into operation or use.

Article 22. Modification general conditions

1. Swedice reserves the right to change or supplement these conditions.
2. The changes shall be effective at the announced date of commencement. If no date of commencement is announced, changes towards the client shall take effect as soon as the change has been communicated.
3. Swedice shall send the changed conditions timely [electronically] to client.
4. Minor changes can be made at any time.
5. If client does not wish to accept an amendment to these terms and conditions, it may dissolve the agreement by the date on which the new terms and conditions come into force. If no effective date is communicated, the client can terminate the agreement within fourteen days of receipt of the amended conditions. In the event of rescission based on this article, Swedice shall never be liable for any compensation to the client.

Article 23. Applicable law and authorised court

1. The legal relationship between parties shall be governed exclusively by Dutch law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
2. Disputes arising from agreements to which these conditions apply shall be submitted exclusively to the authorised court in 's-Hertogenbosch.

Article 24. Translation

1. In conflict with or ambiguity in a translated version of these conditions, the text of the Dutch version shall be decisive.

DEEL II. ADDITIONAL GENERAL PROVISIONS FOR RENT

Article 25. Applicability

1. The provisions in this part shall apply specifically to the lease of goods by Swedice unless and to the extent that parties have not deviated from this in agreement and without prejudice to the provisions in the other articles of these conditions to the extent they do not differ.

Article 26. Property

1. The good rented by Swedice to the client is and shall remain property of Swedice.
2. Swedice has the right to sell or encumber the rented item with any personal or business right. If necessary, the client shall provide all necessary assistance.
3. Swedice is entitled to transfer its rights and obligations relating to the rent from the agreement between the parties, in whole or in part, to third parties. If required, the Client will provide all necessary cooperation in this regard.

Article 27. Delivery and installation rented good

1. The client is entitled to examine the rented prior to delivery or completion.
2. Client shall be deemed, if applicable after installation by Swedice, to have received the rented undamaged and in good condition and examined for soundness, even if the client did not examine the rented and/or between Swedice and client no description of the state of the rented was made when the client accepted the rented.
3. The rented good is put at the disposal of the client by Swedice and, if applicable, installed by Swedice at the location and date of commencement of the lease mentioned in the agreement, where the client is obliged to be present at this date on the agreed upon location. If the client is not present at the agreed upon location and date, Swedice is entitled to return the rented good and to charge the costs relating to the incomplete delivery to the client. The lease term is retained, whereby the client is not entitled to any compensation.

4. The costs for placement and installation of the rented good, including the costs included in the offer or order confirmation, shall be borne by the client. If the rented good during the term needs to be reinstalled, moved, disassembled or removed at the request of the client, the costs shall be borne by the client.

Article 28. Use of rented good

1. The Client shall only operate and store the rented item at the location and under the conditions stated in the Agreement.
2. Use of the rented is entirely at the risk of the client.
3. The client is not allowed to use the rented for purposes other than for which it was intended. If instructions were issued with the rented, the rented must be used according to these instructions.
4. The client is not allowed to make any change[s] to the rented and, if applicable, installed goods.

Article 29. Obligations client

1. The client is not permitted to dispose of, sublet, or otherwise make the rented item available to a third party without the written consent of Swedice.
2. The client is not allowed, without permission of Swedice, to assign the rented good with the right of pledge or mortgage or any other restricted rights, or to grant the rented good in any other way as security to third parties.
3. If the client is not the owner of the (business) premises where the rented item is located, it is responsible for ensuring that the owner of the (business) premises agrees to perform all actions that Swedice deems desirable or necessary to establish, replace, move, expand, modify, or remove the rented item, both for its own benefit and for the benefit of third parties. Swedice may require that client submits a written statement thereof.
4. Client is obliged to not grant any real rights [such as building and planting rights and easement of access] at the request of Swedice in favour of Swedice and to [have] establish[ed] for the rented good and any accompanying purposes and accessories.
5. Client shall administer the rented good with due diligence.

Article 30. Maintenance

1. Swedice shall maintain the rented in good condition for the duration of the agreement, without prejudice to the provision in article 6.1.
2. The client is obliged to grant Swedice access to the rented at all times for inspection.
3. The client is obliged to grant the designated persons by or on behalf of Swedice the opportunity to maintain, repair and remove the rented good.
4. Client is obliged to ensure the rented good is easily accessible in the opinion of Swedice. Swedice is entitled to [have] remove[d] any obstructions after written summons and serving notice. Any resulting costs shall be fully borne by the client.

Article 31. Liability and insurance

1. During the rental period, the client is liable for all damage Swedice suffers as a result of, for instance, loss, theft or damage to the rented, therefore also in the case of force majeure on the part of the client.
2. Client is obliged to report to Swedice any damage to the rented, as well as loss or theft of the rented, without delay and at the latest within one day after discovery of the damage, theft or loss.
3. Client is obliged to insure and keep insured the rented at their replacement value against all risks that can reasonably be insured, including in any case theft, vandalism, fire, water damage etc. If Swedice request thus, the client is obliged to prove its insurance by presenting the policy.
4. The client is obliged, upon the first request of Swedice, to assign its rights to its insurer to Swedice. The client is not permitted to pledge, assign, transfer or otherwise encumber these rights to third parties.

Article 32. Malfunctions

1. Client shall report to Swedice any malfunctions to the rented good within 24 hours after the malfunction occurred or was noted.
2. Costs for repair shall be borne by Swedice, unless the malfunction can be attributed to an activity of the client

Article 33. End of agreement

1. Client is obliged to make the rented good available to Swedice again after termination of the lease by delivery of the rented to Swedice at the agreed upon location and date.
2. If the rented good must be disassembled, Swedice will disassemble and remove the rented good to its own expense.
3. Swedice shall – if applicable – leave behind the location of the client as orderly as possible. The costs for returning the location to its original state and the removal of other parts of the installation other than the rented object [including but not limited to piping] shall be borne by the client.