

of: T. Riemersma h.o.d.n. Informatie-technologisch bureau "CompuPhase"  
1e Industriestraat 19-21, 1401 VL Bussum, The Netherlands  
Chamber of Commerce No. for Gooi-, Eem- en Flevoland: 32041148

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**Article 1: Applicability/definitions**

1. These General Terms and Conditions shall apply to all offers and all agreements of T. Riemersma h.o.d.n. Informatie-technologisch bureau "CompuPhase" with its registered office at Bussum, The Netherlands, hereinafter referred to as "CompuPhase".
2. The buyer or contracting party shall be referred to as "the Other Party".
3. A number of provisions in these General Terms and Conditions shall only include the situation in which the Other Party is a natural person that does not act in the carrying out of a profession or business. The Other Party shall be referred to as "the Consumer" in the context of these provisions.
4. "In writing" for the purposes of these General Terms and Conditions shall mean: by letter, e-mail, fax or any other mode of communication that is regarded as equivalent to writing in view of advances in technology and conventional practices.
5. The possible invalidity of (any part of) a provision contained in these General Terms and Conditions shall not affect the validity of the remaining provisions.
6. These General Terms and Conditions shall also apply to subsequent orders and part orders flowing from this agreement.
7. A lasting business relationship shall only be deemed to exist if CompuPhase has already handed these General Terms and Conditions several times to the Other Party. CompuPhase shall not be obliged to produce these General Terms and Conditions in order for them to apply to each new agreement.

**Article 2: Establishing agreements**

1. The agreement shall be established after the Other Party has accepted the offer from CompuPhase even if this acceptance differs in subordinate points from the offer. If however the acceptance by the Other Party differs essentially from the offer, the agreement shall not be deemed established until CompuPhase has expressly agreed to these differences in writing.
2. If the Other Party assigns or places an order with CompuPhase without first making an offer, CompuPhase shall only be bound by this assignment or order after it has confirmed this to the Other Party in writing.
3. CompuPhase shall only be bound by verbal agreements after it has confirmed these to the Other Party in writing or as soon as CompuPhase has started to carry out these agreements without objection from the Other Party.
4. Additions to or amendments to these General Terms and Conditions or the agreement shall only bind CompuPhase after these have been confirmed to the Other Party.

**Article 3: Offers, quotations, prices**

1. All offers and quotations from CompuPhase shall be non-binding, unless they specify a date for acceptance. If an offer or quotation contains a non-binding proposal and the Other Party accepts such proposal, CompuPhase shall be entitled to withdraw the proposal within two working days of receiving acceptance.
2. The prices stated in the offers and quotations shall be exclusive of VAT and any costs, for example, costs for transport, despatch, administration and statements of expenses from third parties.
3. A draft estimate shall not oblige CompuPhase to deliver part of the proposal stated in this estimate for a corresponding part of the price.
4. If the proposal is based on the details supplied by the Other Party and these details are incorrect or incomplete or are subsequently amended, CompuPhase shall be entitled to adjust the prices and/or delivery deadlines stated in the proposal.
5. Offers, quotations and prices shall not automatically apply to subsequent orders.
6. Samples and models that are displayed and/or provided and specifications of colours, dimensions, weights and other descriptions in brochures, promotional material and/or on CompuPhase's website shall be as accurate as possible but shall only be intended as a guide. The Other Party may derive no rights from these.
7. The samples and models stated in the previous paragraph shall remain CompuPhase's property and shall be returned to CompuPhase on first demand at the Other Party's expense.
8. a. If between the date of concluding the agreement and carrying it out, (cost) price increasing circumstances take place for CompuPhase as a result of legislation and regulations, currency fluctuations or price changes with respect

to third parties or suppliers, etc. engaged by CompuPhase, CompuPhase shall be entitled to increase the agreed price and charge these to the Other Party.

- b. In the event of price increases within three months of establishing the agreement, the Consumer shall be entitled to dissolve the agreement giving notice in writing. If the Consumer does not inform CompuPhase of its intention to use its right to dissolve the agreement within 14 days of notification of the price change, CompuPhase may assume that the Consumer has agreed to the price change.

#### **Article 4: Engaging third parties**

CompuPhase shall be entitled to have certain deliveries carried out by third parties if and in so far as required for the correct carrying out of the agreement. This shall be subject to assessment by CompuPhase.

#### **Article 5: Providing information for advice purposes**

1. The Other party must ensure that:
  - a. it shall make available to CompuPhase all information required for the execution of the agreement and/or adequate advice in time and in the manner desired by CompuPhase;
  - b. it shall inform CompuPhase about developments within the organisation that may be relevant for the advice;
  - c. any data carriers, electronic files and suchlike provided by the Other Party to CompuPhase shall be free from viruses and/or defects.
2. The Other Party shall ensure that the information provided by it is correct and complete and shall indemnify CompuPhase against any third party claims arising from the incorrectness and/or incompleteness of the information.
3. CompuPhase shall treat the information provided by the Other Party in confidence and shall only provide the information to third parties insofar as is necessary for the execution of the agreement.
4. If the obligations referred to in this article are not met, CompuPhase shall be entitled to suspend the execution of the agreement and/or the advice until the time that the Other Party has met its obligations. The costs in connection with the delay obtained or other consequences arising from this shall be at the expense and risk of the Other Party.

#### **Article 6: Delivery/completion deadlines**

1. Agreed delivery dates can never be considered as binding deadlines. If CompuPhase fails to comply or comply on time with its obligations under this agreement, it shall be placed in default in writing by the Other Party whereby it shall be granted a reasonable period in which to still fulfil its obligations.
2. CompuPhase shall be entitled to deliver in parts whereby CompuPhase may invoice separately for each partial delivery.
3. The risk relating to the items supplied shall pass to the Other Party at the time of delivery. The term “time of delivery” for the purposes of these General Terms and Conditions shall mean the point at which the items to be delivered leave CompuPhase’s premises, warehouse or shop or the point at which CompuPhase has informed the Other Party that it can collect these items.
4. In departure from paragraph 3 of this article, “the time of delivery” as regards Consumers shall mean the point at which the items are actually available to the Consumer.
5. Despatch or transport of the items ordered shall take place in a manner to be determined by CompuPhase but at the expense and risk of the Other Party. CompuPhase shall not be responsible for any damage of any nature whether or not occasioned to the items themselves and which is linked to the despatch or transport.
6. In departure from paragraph 5 of this article, despatch and transport of the items ordered shall as far as the consumers are concerned take place at CompuPhase’s risk but at the consumer’s expense.
7. If it appears impossible to deliver the items (as agreed) to the Other Party due to any reason within the Other Party’s sphere of risk or if the items are not collected, CompuPhase shall be entitled to store the items at the Other Party’s expense and risk. Unless CompuPhase has expressly stipulated another deadline in writing, the Other Party shall give CompuPhase the opportunity within one month of the notice of the storage to deliver the items or the Other Party shall be required to collect the items within this period.
8. If the Other Party remains in default in fulfilling its obligation to collect the items after the period stated in paragraph 7 of this article, it shall be considered legally in default with immediate effect. CompuPhase shall then be entitled to dissolve all or part of the agreement with immediate effect without judicial intervention by giving written notice and to then sell the items to third parties without this resulting in an obligation to compensate for damage, costs and interest.
9. The aforementioned shall not affect the Other Party’s obligation to compensate for any (storage) costs, damage caused by delay, transport costs, loss of earnings or other losses.

10. CompuPhase cannot be obliged to commence delivery at an earlier stage than after receipt of all necessary details and any agreed (advance) payment from the Other Party. If this leads to delay, the delivery deadlines shall be extended proportionately.

### **Article 7: Packaging**

1. If CompuPhase delivers the items in packaging designed to be used several times, the packaging shall remain CompuPhase's property. The Other Party may not use this packaging for other purposes than for which it is intended.
2. CompuPhase shall be entitled to charge the Other Party a fee for this packaging. If the Other Party returns the packaging carriage paid within the agreed period, CompuPhase shall be obliged to take back this packaging and CompuPhase shall refund the fee charged to the Other Party.
3. If the packaging is damaged, incomplete or lost, the Other Party shall be responsible for such loss and shall forfeit its claim for reimbursement.
4. If the damage stated in paragraph 3 of this article exceeds the fee charged, CompuPhase shall be entitled to refuse to take back the packaging. CompuPhase can then charge the Other Party for the cost price of the packaging minus the fee paid by the Other Party.
5. If the packaging is intended for use only once, CompuPhase shall not be required to take back the packaging and it shall be obliged to leave this packaging with the Other Party. The Other Party shall then bear any costs for disposing of this packaging.

### **Article 8: Complaints and returns**

1. The Other Party shall be obliged to check the items delivered immediately upon receipt and to state any visible deficiencies, defects, damages and/or discrepancies in quantity on the waybill or consignment note. In the absence of a waybill or consignment note, the Other Party shall be obliged to inform CompuPhase in writing as to any deficiencies, defects, etc., within 24 hours of receiving the items.
2. Other complaints shall be reported in writing to CompuPhase immediately after discovery but no later than the agreed guarantee period. The Other Party shall bear all risks of failing to report directly. If no explicit guarantee period has been agreed, the period of one year following delivery shall apply.
3. If no complaint has been reported to CompuPhase within the periods stated in the above paragraphs, the items shall be considered received in good condition and in accordance with the agreement. There shall in such case be no possible claim under any agreed guarantee.
4. Goods ordered shall be delivered in the (wholesale) packaging kept in stock by CompuPhase. Deviations regarding sizes, weights, quantity, colours, etc. that are acceptable in the branch as minor shall not be considered a shortcoming by CompuPhase. No claim under the guarantee shall be possible in such case.
5. Complaints shall not suspend the Other Party's payment obligations.
6. Paragraph 5 of this article shall not apply to the Consumer.
7. The Other Party shall enable CompuPhase to investigate the complaint and in this context, to provide CompuPhase with all information relating to the complaint. If the items have to be returned in order to investigate the complaint, this shall take place at the Other Party's expense and risk unless the complaint turns out to be valid.
8. All returns shall take place in a manner stipulated by CompuPhase and in the original packaging and wrapping.
9. No complaints shall be possible regarding incompleteness or properties of items manufactured from natural materials if this incompleteness or properties are inherent to the nature of these materials.
10. No complaints shall be possible regarding discolouration or slight discrepancies in colours.
11. No complaints shall be possible regarding items, which following receipt by the Other Party have changed with respect to their nature and/or composition, have been completely or partly worked or processed.

### **Article 9: Guarantees**

1. CompuPhase shall ensure that the agreed deliveries are carried out correctly and according to the norms applying in the branch but shall never provide a more extensive guarantee in this regard than that expressly agreed between the parties.
2. CompuPhase shall be responsible during the guarantee period for the usual quality and reliability of the items delivered.
3. If the manufacturer or supplier provides a warranty for the items delivered by CompuPhase, this warranty shall apply in the same manner between the parties. CompuPhase shall inform the Other Party in this regard.
4. If CompuPhase obtains raw materials and/or materials from third parties for the production of the items, CompuPhase shall base its opinion in respect of the behaviours and qualities of these raw materials and/or materials on the information provided to CompuPhase by the manufacturer or the supplier of those raw materials and/or materials. If a

warranty was issued by the manufacturer or supplier for the raw materials/materials supplied, that warranty shall apply similarly between parties. CompuPhase shall inform the Other Party in this regard.

5. CompuPhase shall not guarantee and shall never be considered to have guaranteed that the items delivered shall be suitable for the purpose for which the Other Party wishes to work or process these or to use them or have them used unless it has expressly confirmed this to the Other Party in writing.
6. If the Other Party justly makes a claim under the guarantee, CompuPhase shall arrange repair or replacement of the items free of charge or arrange a refund or reduction of the purchase price at CompuPhase's discretion. If there is any additional damage, this shall be subject to article 10 "Liability" of these General Terms and Conditions.

#### **Article 10: Liability**

1. CompuPhase shall accept no liability other than the guarantees explicitly agreed or given by CompuPhase.
2. Without prejudice to that stated in paragraph 1 of this article, CompuPhase shall only be liable for direct damage. Any liability of CompuPhase for consequential damage such as trading losses, loss of earnings and/or losses sustained, damage caused by delay and/or personal or bodily injury shall be expressly excluded.
3. The Other Party shall be obliged to take all measures necessary to prevent or limit any damage.
4. If CompuPhase is liable for any damage sustained by the Other Party, CompuPhase's obligation to provide compensation shall at all times be limited to the amount paid by its insurer in the respective case. If CompuPhase's insurer makes no payment or if the damage is not covered by any insurance concluded by CompuPhase, CompuPhase's obligation to provide compensation shall be limited to the invoice amount of the items delivered.
5. The Other Party shall commence proceedings against CompuPhase no later than six months after the point where it gained knowledge or should have gained knowledge of the damage it has sustained.
6. A period of one year shall apply for the Consumer in departure from paragraph 5 of this article.
7. The Other Party may make no claim under the guarantee nor may it hold CompuPhase liable on other grounds if the damage occurred due to:
  - a. improper use or use contrary to the purpose for which the items delivered were intended or the directions, advice, operating instructions, leaflets, etc. provided by or on behalf of CompuPhase;
  - b. improper storage of the items delivered;
  - c. errors or incompleteness of the details provided to CompuPhase by or on behalf of the Other Party;
  - d. instructions or directions from or on behalf of the Other Party;
  - e. repairs or other work or processing being carried out on the items delivered by or on behalf of the Other Party without express, prior, written approval from CompuPhase.
8. The Other Party shall, in the cases stated in paragraph 7 of this article be fully liable for all damage flowing from this and shall expressly indemnify CompuPhase from all third party claims to compensate for this damage.
9. The limitations of the liability stated in this article shall not apply if the damage is due to intent and/or recklessness by CompuPhase or its supervisory staff on a management level or if mandatory legal provisions oppose this. Only in these cases shall CompuPhase indemnify the Other Party against any third party claims.

#### **Article 11: Payment**

1. CompuPhase shall all times be entitled to demand (partial) advance payment or any other security for payment from the Other Party.
2. Payment should be made within 30 days after the date of the invoice unless the parties expressly agree otherwise in writing. The invoice shall be considered correct if the Other Party has not contested it within this payment deadline.
3. If an invoice has not been paid in full following expiry of the deadline stated in paragraph 2, the Other Party shall be liable to CompuPhase for late payment interest of two per cent per month calculated cumulatively over the principal sum. Parts of a month shall be counted as full months.
4. CompuPhase shall also be entitled to charge the Other Party for out-of-court collection costs if payment is still outstanding following dunning by CompuPhase.
5. The out-of-court collection costs stated in paragraph 4 shall amount to:
  - a. fifteen per cent of the amount of the principal sum for the first € 2,500.00 of the demand (with a minimum of € 40.00);
  - b. ten per cent of the amount of the principal sum over the next € 2,500.00 of the demand;
  - c. five per cent of the amount of the principal sum over the next € 5,000.00 of the demand;
  - d. one per cent of the amount of the principal sum over the next € 190,000.00 of the demand;
  - e. a half per cent of the amount of the principal sum above the amount of € 200,000.00 of the demand, with a maximum of € 6,775.00.

6. For calculating the out-of-court collection costs, CompuPhase shall after one year be entitled to increase the principal sum of the demand by the cumulatively built up late payment interest in that year according to paragraph 3 of that article.
7. If full payment by the Other Party is not forthcoming, the Other Party shall be entitled to dissolve the agreement by giving notice in writing without any further notice of default or judicial intervention or to suspend its obligations under the agreement until payment has been received or the Other Party has provided proper security for this. CompuPhase shall also have the aforementioned right of suspension if it has legitimate grounds to doubt the Other Party's creditworthiness even before the Other Party enters into default regarding payment.
8. CompuPhase shall first apply the payments made by the Other Party to settle all the outstanding interest and costs and then against the longest outstanding payable invoices unless the Other Party expressly states at the time of payment that the payment relates to a later invoice.
9.
  - a. The Other Party shall not be entitled to offset claims from CompuPhase against any counterclaims that it may have against CompuPhase. This shall also apply if the Other Party applies for (temporary) suspension of payment or is declared bankrupt.
  - b. That stated in sub a. of this article shall not apply to agreements with the Consumer.

### **Article 12: Reservation of ownership**

1. CompuPhase shall reserve ownership of all items delivered and to be delivered up until the point at which the other party has completely fulfilled all payment obligations towards CompuPhase.
2. The payment obligations in paragraph 1 shall consist of the payment of the purchase price for the items delivered and to be delivered plus any demands relating to work carried out in connection with the delivery and demands due to culpable shortcoming by the Other Party in fulfilling its obligations including the payment of compensation, out-of-court collection costs, interests and any penalties.
3. If this refers to the delivery of identical, non-individualized items, the consignment of items relating to the oldest invoice shall be considered to have been sold first. Reservation of ownership shall therefore rest in any case on all items delivered, which at the time of claiming reservation of ownership were still in the Other Party's stocks, shop and/or property.
4. The Other Party may sell on items subject to reservation of ownership in the context of normal business provided it has also stipulated reservation of ownership on the items delivered with respect to its customers.
5. As long as the items delivered are subject to reservation of ownership, the Other Party shall not be entitled to pledge these items in any way or to put them at the disposal of a financier.
6. The Other Party shall be obliged to inform CompuPhase immediately in writing if any third parties assert reservation of ownership or other rights on the items subject to reservation of ownership.
7. The Other Party shall be obliged to carefully preserve the items subject to reservation of ownership and to ensure that they are identifiable as CompuPhase's property until it has fulfilled all its payment obligations towards CompuPhase.
8. The Other Party shall arrange for consequential loss insurance or fire and theft insurance, that the items delivered subject to reservation of ownership are covered at all times and to make the insurance policy and the respective premium payment receipts available for inspection by CompuPhase on first demand.
9. If the Other Party contravenes the conditions of this article or if CompuPhase claims reservation of ownership, CompuPhase and its employees shall have the irrevocable right to enter the Other Party's premises and take back the items subject to reservation of ownership without prejudice to CompuPhase's right to compensation due to damage, loss of earnings and interest and the right to dissolve the agreement giving written notice without further notice of default.

### **Article 13: Usage rights**

1. This Article applies to all software provided by CompuPhase, unless agreed otherwise in writing.
2. CompuPhase grants the Other Party the non-exclusive, non-transferable right to use the software, including the associated documentation.
3. The Other Party shall use the software exclusively in its own organisation, on the maximum number of processors and by the maximum number of users that is specified in the license of the software. In absence of a license that specifies the maximum numbers of deployments and of users of the software, the software is licensed for use on one processor and by one user.
4. The usage rights may not be transferred to a third party without permission from CompuPhase in written notice. The Other Party is not allowed to sub-license the software, or to sell or rent the software, or to provide the software to a third party in any other way, even if that third party only uses the software on behalf of the Other Party.

5. The Other Party shall not modify the software or have it modified by a third party. The source code of the software is not provided to the Other Party, unless agreed otherwise in writing. CompuPhase retains all intellectual property rights with regards to the software.

#### **Article 14: Intellectual property rights**

1. CompuPhase is and shall remain entitled to all intellectual property rights which are vested in, arise from, are connected with and/or are part of the items supplied by CompuPhase in the framework of the agreement. All this applies, unless parties have explicitly agreed otherwise in writing.
2. The exercise of the rights referred to in paragraph 1 of this article is, both during and at the end of the execution of the agreement, explicitly and exclusively reserved to CompuPhase.
3. It is, without express written permission, not allowed to repeat the implementation of a design from CompuPhase, or part thereof, even if CompuPhase refrained from implementing the design.
4. The Other Party guarantees that all information provided or to be provided by it to CompuPhase shall not infringe the copyright or any other intellectual property right of third parties. The Other Party is liable for any damage suffered by CompuPhase as a result of such infringements and shall indemnify CompuPhase against any third party claims.

#### **Article 15: Bankruptcy and loss of power to dispose of property, etc.**

1. Without prejudice to that stated in the other articles of these General Terms and Conditions, CompuPhase shall be entitled to dissolve the agreement by giving written notice without any further notice of default or judicial intervention at the point where the Other Party;
  - a. is declared bankrupt or files for bankruptcy;
  - b. applies for (temporary) suspension of payment;
  - c. is affected by enforceable seizure;
  - d. is placed under guardianship or judicial supervision;
  - e. otherwise loses the power to dispose of its property or loses legal capacity regarding all or part of its assets.
2. That stated in paragraph 1 of this article shall apply if the guardian or administrator recognizes the obligations flowing from the agreement as liabilities of the estate.
3. The Other Party shall be obliged at all times to inform the guardian or the administrator of the (content of the) agreement and these General Terms and Conditions.

#### **Article 16: Force majeure**

1. In the event of force majeure with respect to the Other Party or CompuPhase, CompuPhase shall be entitled to dissolve the agreement by giving written notice to the Other Party without judicial intervention or to suspend its obligations towards CompuPhase for a reasonable period without being liable for any compensation.
2. Force majeure with respect to CompuPhase in the context of these General Terms and Conditions shall include: a non-culpable shortcoming by CompuPhase, third parties or suppliers engaged by it or other serious grounds on the part of CompuPhase.
3. The following shall be considered as force majeure: war, revolt, mobilization, domestic and foreign riots, government measures, strikes within CompuPhase's organization and/or that of the Other Party or the threat of this and similar circumstances, disturbances to the exchange rates prevailing at the time of entering into the agreement, business interruptions due to fire, break-in, sabotage, natural and similar phenomena also due to weather conditions, blockades, accidents and similar transport difficulties and delivery problems.
4. If the force majeure occurs after part of the agreement has already been carried out, the Other Party shall be obliged to fulfil its obligations towards CompuPhase up to that point.

#### **Article 17: Cancellation and suspension**

1. If the Other Party wishes to cancel the agreement prior to or during its carrying out, it shall be liable for compensation to be stipulated by CompuPhase. This compensation shall include all costs already incurred by CompuPhase and the damage it incurs due to the cancellation as well as the loss of earnings. CompuPhase shall be entitled to set the aforementioned compensation and to charge the Other Party 20 to 100 per cent of the agreed price at its discretion and depending on the deliveries already made.
2. The Other Party shall be liable towards third parties for the consequences of the cancellation and shall indemnify CompuPhase for claims from these third parties arising from this.

3. CompuPhase shall be entitled to offset all amounts already paid by the Other Party against the amounts of compensation owed by the Other Party.
4. When suspending the agreed deliveries at the request of the Other Party, all costs incurred up to that point shall be immediately payable and CompuPhase shall be entitled to charge these to the Other Party. CompuPhase shall also be entitled to charge the Other Party for all costs incurred or to be incurred during the suspension period.
5. If it is not possible to resume the carrying out of the agreement after the agreed suspension period, CompuPhase shall be entitled to dissolve the agreement without judicial intervention by giving written notice to the Other Party. If the carrying out of the agreement is resumed following the agreed suspension period, the Other Party shall be obliged to reimburse CompuPhase for any costs due to the resumption.

**Article 18: Applicable law/jurisdiction**

1. The agreement entered into between CompuPhase and the Other Party shall be governed exclusively by Dutch law.
2. Any disputes shall be adjudicated by the competent court in the district where CompuPhase has its registered office although CompuPhase shall always be entitled to bring the dispute before the competent court in the district where the Other Party has its registered office.
3. The Consumer shall be entitled at all times to opt for the dispute to be adjudicated by the legally competent court provided it makes this choice known in good time to CompuPhase. The term “in good time” shall mean: within one month of CompuPhase informing the Consumer in writing of its intent to have the dispute adjudicated by the court in the district where it has its registered office.
4. If the Other Party has its registered office outside the Netherlands, CompuPhase shall be entitled to act according to that stated in paragraph 2 of this article or at its discretion, to submit the dispute for adjudication by the competent court in the country or the State where the Other Party has its registered office.