



## **General Conditions of Sale of 'Stichting Mommerskwartier'**

General Conditions of Sale of 'Stichting Mommerskwartier', consisting of the 'TextielMuseum', 'TextielLab', 'Regionaal Archief Tilburg' and 'Stadsmuseum Tilburg', with registered place of business at Tilburg, Goirkestraat 96 (5046 GN), registered with the Chamber of Commerce of Tilburg, number 18085741.

### **Article 1: Definitions**

In these General Conditions the following terms shall have the following meaning, unless expressly stated otherwise:

- 1.1 Stichting Mommerskwartier: the legal entity Stichting Mommerskwartier, consisting of the TextielMuseum, TextielLab, the Regionaal Archief Tilburg and Stadsmuseum Tilburg, having its registered place of business in Tilburg, Goirkestraat 96 (5046 GN), registered with the Chamber of Commerce of Tilburg, number 18085741, User of these Conditions.
- 1.2 Contract Party: the natural person, partnership, other associations of persons and/or legal entity that has entered into an Agreement with Stichting Mommerskwartier to which these General Conditions of Sale apply.
- 1.3 Agreement: the Agreement between Stichting Mommerskwartier and Contract Party, and also between Stichting Mommerskwartier and any third parties for the performance of the Agreement or part thereof, with respect to the production and sale of goods and/or the performance of services. This also includes but is not limited to the 'Overeenkomst Wasserijopdrachten' (Laundry Agreement), 'Overeenkomst Groepsboekingen' (Group Booking Agreement), 'Overeenkomst Consignatieopdrachten' (Consignment Agreement) and 'Overeenkomst Collectieopdrachten' (Collection Commission).

### **Article 2: General**

- 2.1 These General Conditions apply to the Agreement between Stichting Mommerskwartier and Contract Party.
- 2.2 The applicability of any General Conditions of Contract Party is expressly rejected.
- 2.3 Modifications of these General Conditions shall be valid only if agreed in writing.
- 2.4 In case of doubt as to the interpretation of one or more provisions of these General Conditions said provisions shall be interpreted in accordance with the spirit of these Conditions.

### **Article 3: Offers and quotations**

- 3.1. Any offers and quotations of Stichting Mommerskwartier are free of engagement and may be withdrawn until the time at which Stichting Mommerskwartier has confirmed the Agreement. An offer or quotation is cancelled in case the product to which the offer or quotation applies, is meanwhile no longer available.
- 3.2. Offers and quotations shall not be binding on Stichting Mommerskwartier if Contract Party should reasonably understand that the offers or quotations or part thereof contain an apparent mistake or clerical error.
- 3.3. An offer of Stichting Mommerskwartier is confirmed in writing by Stichting Mommerskwartier and signed as approved by Contract Party, as a result of which the Agreement is entered into by and between Stichting Mommerskwartier and Contract Party. Verbal agreements shall be binding only after they have been confirmed in writing by Stichting Mommerskwartier.
- 3.4. Prices contained in an offer or quotation are exclusive of btw (Dutch VAT) and any additional costs agreed by Stichting Mommerskwartier and Contract Party, unless specified otherwise. Price increases due to changes in taxes, social contributions or legal measures occurring after the time of the offer but prior to the time of delivery shall be charged to Contract Party by Stichting Mommerskwartier.
- 3.5. In case the acceptance of the offer differs from that specified in the offer or quotation said acceptance shall not be binding on Stichting Mommerskwartier.
- 3.6. Deliveries of household articles may differ from that agreed with Contract Party. Stichting Mommerskwartier reserves the right to deliver and invoice up to 5% in excess of that agreed between Stichting Mommerskwartier and Contract Party.

### **Article 4: Performance, delivery and duration of the Agreement**

- 4.1. If a term has been agreed for the performance of the Agreement by Stichting Mommerskwartier, said term shall never be a final term. For that reason Stichting Mommerskwartier shall never be liable for

- any damage caused by nonobservance of said term. In case of nonobservance of a term therefore, Contract Party is obliged to declare Stichting Mommerskwartier in default in writing. In that case Stichting Mommerskwartier shall be given a reasonable term to subsequently perform the Agreement.
- 4.2. Stichting Mommerskwartier reserves the right to engage any third parties in order to perform certain services for the purpose of the Agreement.
  - 4.3. In case Stichting Mommerskwartier needs information from Contract Party for the purpose of the performance of the Agreement the term of performance shall not commence until after Contract Party has provided the correct and complete information to Stichting Mommerskwartier.
  - 4.4. In case it appears during the performance of the Agreement that proper performance of the Agreement by Stichting Mommerskwartier requires to change or complement the Agreement, Stichting Mommerskwartier and Contract Party shall modify the Agreement in good time and by mutual consultation.
  - 4.5. Stichting Mommerskwartier may refuse a request to modify the Agreement without being in default in case said modification may affect the quality and/or quantity of the services to be performed for the purpose of the Agreement.
  - 4.6. Delivery shall take place at the time and place agreed by the Parties.

#### **Article 5: Force Majeure**

- 5.1. Stichting Mommerskwartier is not obliged to fulfil any obligations towards Contract Party in case of Force Majeure on the part of Stichting Mommerskwartier.
- 5.2. In these General Conditions Force Majeure shall include, in addition to that provided with respect to that by law and case law, any external influences, foreseen or unforeseen, which are beyond the influence of Stichting Mommerskwartier, and as a result of which Stichting Mommerskwartier is unable to fulfil its obligations. These shall include but are not limited to: operational failure, failure of computers, fire, strike, lock-out, war, revolution or restrictions due to government measures, and nonobservance by third parties of their obligations towards Stichting Mommerskwartier.
- 5.3. Stichting Mommerskwartier and Contract Party may suspend the obligations resulting from the Agreement for the duration of Force Majeure. In case of Force Majeure Contract Party shall not be entitled to any damages.
- 5.4. To the extent that Stichting Mommerskwartier has already fulfilled part of its obligations resulting from the Agreement at the time at which Force Majeure occurs, Stichting Mommerskwartier shall have the right to separately invoice the part performed. Contract Party is obliged to settle this invoice as if it were a separate Agreement.

#### **Article 6: Payment**

- 6.1. The obligation of Contract Party to effect payment to Stichting Mommerskwartier ensues from an invoice sent to Contract Party by Stichting Mommerskwartier.
- 6.2. Payment to Stichting Mommerskwartier of the amount(s) due as referred to in the invoice by Contract Party shall take place within 28 days of the invoice date, by transfer to or payment through the account number specified in the invoice or by payment in cash, unless paragraph 3 of this article applies.
- 6.3. Otherwise, notwithstanding paragraph 1 of this article, payment shall be effected prior to the performance of the Agreement in case:
  - a. Contract Party is registered outside the Netherlands: after the first order an invoice is sent for an advance payment of 30 %. Stichting Mommerskwartier shall not commence the performance of the Agreement until after receipt of the advance. The goods will not be sent until after the entire invoice amount has been paid;
  - b. any administrative charges due;
  - c. the order takes place by mail order;
  - d. photos are purchased from the 'Regionaal Archief' of Stichting Mommerskwartier;
  - e. orders are given for the laundry: the good to be processed is not returned until after payment of the entire invoice;
  - f. in other cases to be determined an Agreement with a debtor is not accepted/performed until the entire invoice has been paid.
- 6.4. In case Contract Party has sent purchase invoices to Stichting Mommerskwartier on account of delivery of goods or performance of services, any unpaid purchase invoices are balanced with unpaid amounts of sales invoices. In case of a remaining amount said amount must be paid by Contract Party subsequently.
- 6.5. In case the invoice amount is € 2.500,- or more a down payment of 30 % of the invoice amount is due.
- 6.6. In case the invoice amount is € 25,- or less Stichting Mommerskwartier shall charge an administrative fee in the amount of € 15,- to Contract Party.
- 6.7. In case of invoices for services of the Laundry, which is part of the Stichting Mommerskwartier, Stichting Mommerskwartier shall charge an administrative/shipping fee in the amount of € 17,50 to debtor, and the entire invoice, as already referred to in article 6.3 under e of these General Conditions, must be paid before the goods are returned.

- 6.8. Notwithstanding paragraph 6 of this article, in case of invoice amounts for group bookings of € 200 or less an administrative charge of € 15 shall be charged to debtor.
- 6.9. In case an Agreement is performed in parts, Stichting Mommerskwartier reserves the right to invoice each part delivery separately.
- 6.10. In case the amount(s) specified in the invoice is not paid within the term as referred to in paragraph 2 of this article, Contract Party shall be in default by operation of the law from the due date of the invoice. From that point in time the legal (commercial) interest, an administrative fee in the amount of € 15,-, and any extrajudicial costs of collection caused shall become due. These costs may be charged by Stichting Mommerskwartier at all times.

#### **Article 7: Reservation of title**

- 7.1. Any goods supplied by Stichting Mommerskwartier as part of the Agreement shall remain the property of Stichting Mommerskwartier until Contract Party has properly fulfilled any and all obligations resulting from the Agreement, including any interests and costs.
- 7.2. Goods supplied by Stichting Mommerskwartier which are subject to reservation of title on the basis of paragraph 1 of this article, may not be alienated and may never be used by way of payment. Contract Party does not have the right to pledge or encumber in any other way the goods subject to reservation of title.
- 7.3. In the event that Stichting Mommerskwartier wishes to exercise its ownership rights as referred to in this article, Contract Party shall give Stichting Mommerskwartier and/or any third parties specified by Stichting Mommerskwartier any assistance required in order to access all those places where the property of Stichting Mommerskwartier is located, and to take back said property.
- 7.4. Contract Party shall at all times do anything as may be reasonably expected from Contract Party in order to secure the ownership rights of Stichting Mommerskwartier.

#### **Article 8: Ownership**

- 8.1. Any goods manufactured by Stichting Mommerskwartier such as but not limited to: means of production, semi-manufactured goods and auxiliary materials and in particular design drawings, construction and detail drawings, information media, computer programmes, data files, photos, lithography, films, micro and macro compositions, data files for the control of the necessary machines shall at all times remain the property of Stichting Mommerskwartier. Stichting Mommerskwartier is not required to issue any such goods referred to in this article.

#### **Article 9: Intellectual property rights**

- 9.1. Without prejudice to the provisions in the previous articles of these General Conditions, Stichting Mommerskwartier shall reserve the rights and powers vesting in Stichting Mommerskwartier by virtue of the 'Auteurswet' (Dutch Copyright Act).
- 9.2. The designs, sketches, drawings, films, software and other materials or (electronic) files and such created by Stichting Mommerskwartier as part of the Agreement shall remain the property of Stichting Mommerskwartier, irrespective whether they were supplied to Contract Party or any third party, unless otherwise agreed by Stichting Mommerskwartier and Contract Party.
- 9.3. Any items or goods supplied by Stichting Mommerskwartier such as but not limited to designs, models, sketches, drawings, films, lithography, software, (electronic) files and printed, knitted, tufted and woven fabrics and such, are intended only for the use of Contract Party for the purpose of performance of the Agreement, and they may not be reproduced, published or disclosed to any third parties by Contract Party without the prior written approval of Stichting Mommerskwartier, unless the nature of the items supplied should require otherwise.
- 9.4. Contract Party guarantees to Stichting Mommerskwartier that, as a result of the performance of the Agreement, and (in particular), the reproduction and publishing of the goods received from Contract Party such as but not limited to designs, models, sketches, drawings, films, photographs, lithography, software, (electronic) files and such do not infringe on any rights which may be exercised by any third parties by virtue of the 'Auteurswet' or any other national, supranational or international legal regulations in the field of copyright or industrial property rights or the law concerning unlawful acts. Contract Party indemnifies Stichting Mommerskwartier both in and out of court from and against any claims which may be asserted by any third parties on the basis of the above laws and regulations.
- 9.5. After delivery by Stichting Mommerskwartier Contract Party obtains the non-exclusive right of use of the good produced by Stichting Mommerskwartier as part of the Agreement, on the basis of the provisions of article 11, in the sense of the 'Auteurswet'. This right of use does not give Contract Party the right to reproduce the good in any way whatsoever.

**Article 10: Licence**

- 10.1. The approval of the use by Contract Party of a good manufactured by Stichting Mommerskwartier shall be exclusively given in advance, in writing and in the form of a licence of which the nature and scope are described by Stichting Mommerskwartier in the offer and/or order confirmation or the invoice issued for said transaction.
- 10.2. In case the Agreement does not contain any provisions for the scope of the licence, said licence shall always be limited to the right of one single use in an unchanged form for such a purpose, in such a number and such a way as intended by Contract Party and Stichting Mommerskwartier on conclusion of the Agreement.
- 10.3. Contract Party shall never have the right to grant sublicenses to any third parties.

**Article 11: Credits**

- 11.1. Contract Party shall use the brand name used by Stichting Mommerskwartier as a producer during ant exhibitions or publications.
- 11.2. In case of non-observance of the obligation referred to in paragraph 1 of this article Stichting Mommerskwartier shall be entitled to a compensation of at least 100% of the customary licence fee applied by Stichting Mommerskwartier, without prejudice to any right to receive compensation for any other damage caused.
- 11.3. In case Contract Party has obtained the written approval of Stichting Mommerskwartier for reproduction of the work, in whatever way, Contract Party is under the obligation to see to it that the name 'Stichting Mommerskwartier' is stated on these reproductions.

**Article 12: Liability**

- 12.1. In case Stichting Mommerskwartier should be liable towards Contract Party said liability shall be limited to the provisions in this article.
- 12.2. Stichting Mommerskwartier is not liable for any damage or whatever nature caused by Stichting Mommerskwartier acting upon incorrect and/or incomplete information provided by or on behalf of Contract Party.
- 12.3. Stichting Mommerskwartier is liable for direct damage of Contract Party or third parties only if said damage is a direct consequence of gross negligence and/or intent on the part of Stichting Mommerskwartier. Any liability is limited to the amount which is paid by the liability insurance of Stichting Mommerskwartier in the individual case concerned. In case the liability insurance does not provide cover, the liability is limited to the invoice amount agreed between Stichting Mommerskwartier and Contract Party.
- 12.4. Liability of Stichting Mommerskwartier for indirect damage, including consequential damage, loss of income or profit and loss of quality of life is excluded at all times.

**Article 13: Applicable law and disputes**

- 13.1. These General Conditions were registered with the Chamber of Commerce of Tilburg in Tilburg and are published on the website of Stichting Mommerskwartier [www.mommerskwartier.nl](http://www.mommerskwartier.nl).
- 13.2. These General Conditions may be obtained free of charge from the 'Bedrijfsvoering' department of the Stichting Mommerskwartier.
- 13.3. These General Conditions and Agreements are governed by Dutch law.
- 13.4. Any disputes between Stichting Mommerskwartier and Contract Party with respect to the Agreement shall be submitted to the jurisdiction of the Court ('Rechtbank') of Breda exclusively, unless Stichting Mommerskwartier and Contract Party should agree settlement by arbitration or binding advice.