

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY  
GRAYPANTS EUROPE B.V. (KVK: 54528127)**

**CLAUSE 1. DEFINITIONS AND APPLICABILITY**

- 1.1 The following definitions are used in these General Terms and Conditions:
- Affiliated Companies:** any legal entity that qualifies as a 'subsidiary' as referred to in Section 2:23a Dutch Civil Code ('DCC') or as a 'group company' as referred to in Section 2:24b DCC.
- Contract:** all agreements which have been concluded or shall be concluded in the future, either in writing, orally or implicitly/tacitly, between Graypants and a Customer, including (but not limited to) Continuing Performance Contracts and all separate purchase agreements which may ensue therefrom.
- Continuing Performance Contract** (in Dutch: "duurovereenkomst"): all agreements which are concluded or shall be concluded in the future, either in writing, orally or implicitly/tacitly, between Graypants and a Customer which regard the regular delivery of products and/or services during a certain period of time, including (but not limited to) distribution and agency agreements.
- Customer:** any natural person or legal entity who/which places an Order with Graypants, or to whom/which GRAYPANTS issues an Offer or with whom/which Graypants implicitly or otherwise enters into or shall enter into a (Continuing Performance) Contract.
- General Terms and Conditions:** these present General Terms and Conditions of Sale and Delivery.
- Offer:** any offer communicated orally or in writing by Graypants to a Customer regarding the purchase of products and/or services from Graypants.
- Order:** any request from a Customer to Graypants – whether this is submitted through Graypants's online dealer portal or otherwise – to supply products and/or services to the relevant Customer.
- Graypants:** Graypants Europe B.V. (Trade Register number: 54528127) and all of its Affiliated Companies.
- 1.2 These General Terms and Conditions apply to all Offers issued by Graypants, as well as to all current and future Orders and (future) Contracts, including Continuing Performance Contracts.
- 1.3 Accepting an Offer, placing an Order (or causing an Order to be placed), or concluding a Contract with Graypants will constitute the Customer's acceptance of the applicability of these present General Terms and Conditions as well as the exclusion of any general terms and conditions imposed by that Customer.
- 1.4 Deviations from these General Terms and Conditions shall only be valid if Graypants consents to such deviations expressly and in writing.

**CLAUSE 2. OFFERS, ORDERS AND FORMATION OF CONTRACTS**

- 2.1 All Offers, Orders and prices stated by Graypants are free of obligation. Graypants will be entitled at all times to refuse and/or refuse to process Orders (regardless of whether these are placed pursuant to an Offer that has been issued), without giving any reason for said refusal because of – amongst other reasons – the fact that Graypants does not and cannot always deliver from its own stock, so its delivery can be dependent on third parties. Therefore, unless agreed otherwise in writing, Graypants shall not own any delivery obligation to a Customer whatsoever (continuous or otherwise). Such a (continuous) delivery obligation shall and will not arise by virtue of the mere fact that Graypants did regularly process previous Orders from a Customer during a particular period of time.
- 2.2 A Contract shall only be formed after Graypants accepts a Customer's Order, including if a Customer has placed an Order based on an obligation-free Offer that has already been made.
- 2.3 As soon as an Order placed by a Customer is accepted by Graypants or at any rate is actually being processed, the Order can no longer be cancelled and the Customer will be obliged to purchase the products ordered. The Customer's non-purchase of the products in question will not relieve it of its obligation to pay for those products.

**CLAUSE 3. PRICES, INVOICING AND PAYMENT CONDITIONS**

- 3.1 Unless expressly agreed otherwise, all prices stated by Graypants are denominated in euros and are exclusive of Dutch VAT and costs for handling, packaging, postage (international or otherwise), port duties and/or transport fees, any taxes and/or any other levies or costs.
- 3.2 The prices stated are free of obligation and may thus be changed by Graypants at any given time. If a price is changed after an Order has been placed, the Customer will only be entitled to cancel the Order within five days after the price change is announced.
- 3.3 Prices agreed in Contracts that have already been concluded will not be binding in the event of manifest errors (or typographical errors) and/or clerical errors.
- 3.4 Unless alternative arrangements are made, invoices must be paid within fourteen days after the invoice date. These and any alternative payment deadlines agreed with a Customer are always absolute, even if Graypants agrees to later payment as a courtesy.
- 3.5 Failure to meet the aforementioned payment deadline will result in late payment interest being charged on the outstanding invoice at a rate of six percent per month, in which respect part of a month will count as a full month. In such a case, Graypants will also be entitled to transfer the invoice to an external collection agency, in which case the Customer will be liable to pay – in addition to the aforementioned late payment interest – all costs actually incurred (which may include extrajudicial collection costs, court costs, and any attorneys')

- fees), with the minimum amount being either EUR 250.00 (two hundred and fifty euros), exclusive of Dutch VAT or – at Graypants’s discretion – fifteen percent of the amount of the outstanding invoice.
- 3.6 Suspension (in Dutch: “*opschorting*”) and/or offset (in Dutch: “*verrekening*”) of any payment (obligation) by a Customer towards Graypants is prohibited and is expressly excluded.
  - 3.7 If a Customer pays invoices via direct debit (European Transfer – SEPA Credit Transfer), the Customer will be liable – if the debit is refused, cancelled or reversed (referred to hereinafter as a ‘**reversal**’) – to pay an amount of EUR 25.00 (twenty-five euros) in administration costs and Clause 3.5 will apply *mutatis mutandis*.
  - 3.8 Any payment made by a Customer will first be applied to paying any late payment interest owed and will then be used to pay any costs owed, with the exception of court costs. Only after the aforementioned interest and costs are paid will any payment by the customer be deducted from the principal sum of an outstanding claim, in which respect the amount will first be applied to the oldest outstanding claim and/or the invoice that has been payable for the longest period of time, regardless of the notation the Customer makes on the payment order.

#### **CLAUSE 4. DELIVERY, RETENTION OF TITLE AND PASSING OF RISK**

- 4.1 Delivery times stated by Graypants are merely indicative. The exceeding of any delivery deadline will not entitle the Customer to damages or to cancel the Order or rescind (in Dutch: “*ontbinden*”) the Contract, unless and to the extent that the deadline is exceeded so egregiously that allowing the Contract to stand would be unacceptable under the standards of reasonableness and fairness.
- 4.2 Information (features, quality, colour, etc.) about the products sold by Graypants is provided to the best of Graypants’s knowledge and with the utmost care, but it cannot be considered as binding.
- 4.3 If Graypants has reason to doubt a Customer’s creditworthiness (such to be determined at Graypants’s sole discretion), Graypants will be entitled to require the Customer to provide security for the performance of the latter’s obligations, even, and primarily, after the Contract has been formed. If the security required by Graypants is not provided, Graypants will be entitled to suspend delivery.
- 4.4 Products delivered by Graypants will remain the property of Graypants until the moment of full payment of all amounts the Customer owes Graypants, including any late payment interest and costs. Title to the products Graypants delivers to the Customer will only be transferred subject to the conditions precedent (as referred to in Section 3:92 DCC) of full payment by the Customer of both the purchase price as well as any late payment interest and costs owed.
- 4.5 As long as title to the products delivered by Graypants has not been transferred to the Customer, the Customer cannot and may not pledge the products, transfer title to those products to a third party, or encumber those products with any other right (restricted or otherwise), except to the extent the Customer sells, processes and/or delivers the products to third parties in the normal course of its business. This provision shall have property law consequences (in Dutch: “*Goederenrechtelijk effect*”).
- 4.6 The Customer grants Graypants in advance the right (or an irrevocable power of attorney) to enter all locations where products delivered by Graypants are located in a given case so that Graypants can exercise its rights of ownership and recover products which have not been paid for. The recovery of its goods in this manner will not prejudice Graypants’s right to claim damages from the Customer or to claim reimbursement of costs incurred in connection with the Customer’s failure to perform.
- 4.7 The risk associated with the products passes to the Customer at the moment of delivery; in other words, as soon as the products have actually been removed from the means of transport at the Customer’s location.

#### **CLAUSE 5. DUTY TO INSPECT, COMPLAINTS, LIABILITY AND WARRANTY**

- 5.1 The Customer must, immediately upon or after receiving the products, check (duty to inspect) whether the products delivered are in accordance with the Order placed and/or satisfy the Contract, as well as whether there are any visible defects or damage to the products.
- 5.2 In the event of complaints or defects:
  - a) the Customer must notify Graypants by email ([amsterdam@graypants.com](mailto:amsterdam@graypants.com)) of visible damage or defects or other externally identifiable damage or defects immediately (within twenty-four hours) after receiving the products, specifying the damage or defects in proper detail, in default of which the Customer will no longer be able to reserve any rights regarding and/or invoke any defect, and it will be established between the parties that the Customer received the products that were delivered in a sound and undamaged condition and in accordance with the quantity stated on the delivery notes;
  - b) the Customer must notify Graypants by email ([amsterdam@graypants.com](mailto:amsterdam@graypants.com)) of invisible damage or defects, or other externally identifiable damage or defects, within seven days after discovering such damage or defects, specifying the damage or defects in proper detail, in default of which the Customer will no longer be able to reserve any rights regarding and/or invoke any defect.
- 5.3 The Customer is not permitted to receive a delivery of products ‘subject to approval’ of any kind or subject to the reservation of any right. By actually taking receipt of the products delivered, the Customer agrees to the provisions of Clauses 5.1 and 5.2, above.
- 5.4 The term for complaining about any invoices sent by Graypants is, at the most, forty-eight hours after receipt of the invoice. If the Customer does not complain about the relevant invoice by email ([amsterdam@graypants.com](mailto:amsterdam@graypants.com)) within that term, in writing and with proper substantiation, it will be established between the parties that the invoice correctly reflects the underlying transaction(s) with Graypants.
- 5.5 Any right (or right of claim) which the Customer can assert against Graypants relating to errors in Graypants’s delivery or defects in the products delivered by Graypants will irrevocably lapse as soon as the terms for filing a complaint stated in this clause have elapsed. If a Customer fails to cooperate, or fails to

- cooperate sufficiently, with Graypants in investigating the validity of the claim in question within the aforementioned terms for filing a complaint, all related rights (or rights of claim) relating thereto will also immediately and irrevocably lapse. The products to which complaints relate must be available for possible inspection by Graypants in the condition in which the products were found on the date the defects were discovered. The right to complain – as well as all rights (or rights of claim) relating thereto – will lapse as soon as the Customer puts the goods delivered into use, or treats or processes them, or causes them to be used, treated or processed, or delivers them in turn to third parties, unless Graypants has issued its advance written consent or the products are covered by a manufacturer's warranty.
- 5.6 If the products demonstrably fail to meet the terms of the Contract (non-conformity), Graypants will always have the option of replacing the relevant products – after they are returned – with new products or refunding the invoice value. Graypants's liability is therefore always limited to the invoice value of the products delivered that are the subject of the complaint(s).
- 5.7 Graypants is not liable for any harm caused by its employee and/or assistants it engages, nor for any indirect harm, including in any case (but not limited to) consequential harm and business losses (such as lost profit, missed savings, and losses attributable to commercial stagnation or missed business opportunities).
- 5.8 Notwithstanding the provisions in the previous paragraphs, Graypants's liability will in any case always be limited to the invoice value (exclusive of Dutch VAT) of the Order that resulted in the harm/loss, or at any rate to the part of the Order to which the liability relates, such also up to a maximum of the amount that Graypants's liability insurer actually pays as a benefit (per instance of liability, per year of insurance cover).
- 5.9 In a situation involving a Continuing Performance Contract, moreover, Graypants's liability will always be limited to the total amount in turnover (exclusive of Dutch VAT) which Graypants invoiced to the Customer in the previous calendar year.
- 5.10 The Customer will indemnify Graypants against all third-party claims regarding any harm/loss incurred, or to be incurred, by such third parties, such with due observance of the provisions of this clause.
- 5.11 The term for prescription of all claims (or rights of claim) and defences against Graypants and any of its employees or assistants it has engaged is twelve months.
- 5.12 All rights (or rights of claim) which a Customer has against Graypants will lapse:
- if the Customer has not instituted legal proceedings against Graypants by no more than six months after the Customer became aware of (or should reasonably have become aware of) the loss/harm or damages claim;
  - within twenty-four months after the event causing the loss/harm occurred; such on pain of said claim becoming inadmissible (i.e. prescribed).
- 5.13 Graypants will never be liable to a Customer for a warranty that offers more extensive recourse to the Customer than the claim which Graypants may institute against its suppliers or manufacturers (in the context of a manufacturer's warranty).

## **CLAUSE 6. EXCLUSIVITY AND LONG-TERM RELATIONSHIPS**

- 6.1 Unless expressly agreed in writing – even in a case that involves (or may involve) a Continuing Performance Contract – no form of exclusivity shall ever accrue to a Customer, nor shall any Customer ever (implicitly or tacitly) be granted or allocated any 'exclusive distribution' right or 'exclusive right' to resell, or any other exclusive sales-related or other right.
- 6.2 Without prejudice to the power to terminate as laid down in Section 6:265 DCC, and in the absence of written agreements to the contrary, either party to a Continuing Performance Contract may cancel such contract at any time – without any damages or other compensation being owed – with due observance of a term of notice of:
- one month, if the contract (including the term of notice) has been in place for no more than two years;
  - two months, if the contract (including the term of notice) has been in place for no more than five years;
  - four months, if the contract (including the term of notice) has been in place for more than five years.
- 6.3 To the extent permitted by law and in the absence of written agreements between the parties to the contrary, upon the termination of a Continuing Performance Contract – regardless of the reason for said termination – a Customer shall not have any right to goodwill compensation and/or client fee, nor to any other form of fee or payment.

## **CLAUSE 7. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 7.1 All intellectual or industrial property rights to products delivered by Graypants to a Customer accrue exclusively to Graypants or its licensors. Intellectual property rights, such as rights to specifications, photographs, designs, drawings, models, slogans, texts, descriptions, artistic products, artwork, either in their original form or after alteration, data, including all changes thereto, and other publicity materials, trade names and/or trade marks, etc., which Graypants provides to a Customer will remain, in their entirety, the property of Graypants. The Customer warrants and guarantees that it does not and will not infringe, in any way whatsoever, upon any intellectual property right held by Graypants or its licensors.
- 7.2 Should the Customer breach his/her obligations pursuant to Clause 7.1, then the breaching Customer will forfeit to Graypants – without any prior notice of default or judicial intervention being required – an immediately due and payable penalty that is not eligible for settlement or suspension in the amount of EUR 10,000.00 (in words: ten thousand euros) per breach and EUR 1,000.00 (in words: one thousand euros) for each day (or part of a day) such breach continues, all of this (to the extent necessary in deviation from the provisions of Section 6:92(1), (2) and (3) DCC) without prejudice to all legal remedies, including (but not limited to) the right to demand specific performance and/or claim full damages. A penalty owed pursuant to

this clause is thus expressly not intended to be considered a substitute for the various forms of statutory damages.

- 7.3 All competition-sensitive information or business secrets, in any form whatsoever, regarding Graypants and its products (including but not limited to price lists, client lists, product specifications, protocols, and price and innovation campaigns) that a Customer obtains and/or examines in the context of a Contract or Continuing Performance Contract (or the performance thereof) is confidential ('**Confidential Information**'). The Customer will observe strict confidentiality in respect of all Confidential Information when dealing with other parties, and will refrain from using, copying, or saving Confidential Information for any purpose other than that for which it was provided to the Customer. The Customer will always keep Confidential Information secure and will not retain it for any longer than reasonably necessary. The Customer is not permitted to provide Confidential Information to third parties in any way, or to share it with, or otherwise disclose it to, third parties. The Customer warrants and guarantees that he/she will duly comply with the duty of confidentiality laid down in this clause, subject to the proviso that this duty of confidentiality will not cover information that is generally known or which has been made public by Graypants, or to the effecting of notifications whose necessity is automatically clear from the context of the ordinary performance of a Contract.
- 7.4 If the provisions of Clause 7.3 are violated, the Customer will forfeit to Graypants – without any prior notice of default or judicial intervention being required – an immediately due and payable penalty that is not eligible for settlement or suspension in the amount of EUR 5,000.00 (in words: five thousand euros) per breach and EUR 500.00 (in words: five hundred euros) for each day (or part of a day) such violation continues, all of this (to the extent necessary in deviation from the provisions of Section 6:92(1), (2) and (3) DCC) without prejudice to all legal remedies, including (but not limited to) the right to demand specific performance and/or claim full damages. A penalty owed pursuant to this clause is thus expressly not intended to be considered a substitute for the various forms of statutory damages.

#### **CLAUSE 8. ONLINE SELLING AND RESELLING**

- 8.1 A Customer is permitted to sell or resell Graypants products online via the Customer's own web shop.
- 8.2 In the context of the exclusive and high-end image of Graypants's designer and brand-name products (and the retention of that image), a Customer is prohibited from selling (or reselling) the products online via online platforms or auction websites operated by third parties (including – but not limited to – Marktplaats, Amazon, eBay, Facebook, Zalando, etc.) because, by engaging in such online sales, a reseller erodes, or may erode, the high-end image of Graypants's designer and brand-name products and thus contravene Graypants's marketing strategy, unless the Customer:
- a) has obtained Graypants's prior written consent; *and*
  - b) will display every product in the relevant product range of the brand/product which the Customer wishes to sell online via third-party platforms/auction websites, in an offline showroom; *and*
  - c) maintains a continuous stock of at least five of every product in the relevant product range of the product brand which the Customer wishes to sell online via third-party platforms/auction websites, such to ensure that the products can be delivered immediately from stock and the online client demand can be met; *and*
  - d) orders at least EUR 5.000,00, exclusive of Dutch VAT, worth of the relevant brand-name products per Order.
- 8.3 If the Customer acts in contravention of Clause 8.2, the Customer will forfeit to Graypants – without any prior notice of default or judicial intervention being required – an immediately due and payable penalty that is not eligible for settlement or suspension in the amount of EUR 2,500.00 (in words: two thousand, five hundred euros) per violation and EUR 250.00 (in words: two hundred and fifty euros) for each day (or part of a day) such violation continues, all of this (to the extent necessary in deviation from the provisions of Section 6:92(1), (2) and (3) DCC) without prejudice to all legal remedies, including (but not limited to) the right to demand specific performance and/or claim full damages. A penalty owed pursuant to this clause is thus expressly not intended to be considered a substitute for the various forms of statutory damages.

#### **CLAUSE 9. GENERAL PROVISIONS**

- 9.1 Graypants is authorised to transfer to third parties all or some of its rights pursuant to Contracts with a Customer, to which transfer the Customer irrevocably agrees and unconditionally lends its cooperation in advance as meant in Section 6:159 DCC.
- 9.2 If, in a given case, Graypants refrains from invoking an applicable provision in the General Terms and Conditions, this will not affect Graypants's entitlement to invoke that provision or any other provision in a subsequent case.
- 9.3 Graypants is entitled to amend these General Terms and Conditions unilaterally from time to time.
- 9.4 The applicable version will always be that which applied on the date the Contract or Continuing Performance Contract was formed with the Customer.
- 9.5 If there is a dispute regarding the interpretation or explanation of any provision of the General Terms and Conditions, the Dutch version of the text and/or the General Terms and Conditions will always take precedence and/or be controlling for the purposes of such interpretation.

#### **CLAUSE 10. DISPUTES: APPLICABLE LAW, COMPETENT COURT, ARBITRATION**

- 10.1 These General Terms and Conditions, all (Continuing Performance) Contracts, as well as any separate purchase or other contracts ensuing therefrom or any disputes and/or non-contractual obligations relating thereto, are governed exclusively by the laws of the Netherlands.
- 10.2 The applicability of the 'United Nations Treaty on Contracts for the International Sale of Goods' (CISG) – also known as the Vienna Sales Convention 1980 – is expressly excluded.
- 10.3 Any disputes between Graypants and a Customer ensuing from – or relating to – these General Terms and Conditions or any (Continuing Performance) Contract, will be submitted in the first instance exclusively – and thus to the exclusion of any other court – to the competent section of the Amsterdam District Court, unless mandatory law confers jurisdiction upon another instance.
- 10.4 Contrary to the provisions of Clause 10.3, if a Customer is established in a non-EU Member State, Graypants will be exclusively entitled (in the form of discretionary authority) to choose that any dispute as referred to in Clause 10.3 shall be settled in accordance with the most recent and then-applicable version of the '*Arbitration Rules of the Netherlands Arbitration Institute*' (NAI) in Rotterdam, the Netherlands. Unless the parties shall agree otherwise at that time:
- a) the arbitral tribunal shall be composed of one arbitrator;
  - b) the arbitrator of the arbitral tribunal shall be appointed according to the 'list procedure' as laid down in the aforementioned Arbitration Rules;
  - c) the proceedings shall be conducted in the Dutch language;
  - d) the place of arbitration shall be Rotterdam;
  - e) the arbitral tribunal shall decide as 'amiable compositeur' (in Dutch: "*goede mannen naar billijkheid*") with due observance of the rule of law (that being Dutch law).
  - f) consolidation of the arbitral proceedings with other arbitral proceedings, as provided for in Article 1046 of the Dutch Code of Civil Procedure and Article 39 of the Arbitration Rules of NAI, is excluded;
  - g) the arbitration decision shall not be subject to appeal.

#### **CLAUSE 11 DATE AND SOURCE OF THE GENERAL TERMS AND CONDITIONS**

- 11.1 These General Terms and Conditions were adopted on March 1<sup>st</sup> 2019 and may be reviewed and downloaded via: <https://graypants.com/terms-conditions/>