

# General Sales Conditions of Westmark B.V., Westmark International B.V. and Westmark LLC

## A -GENERAL PROVISIONS

### 1 APPLICABILITY AND DEFINITIONS

- 1.1 These Conditions ("these Conditions") are applicable to any and all Negotiations with, proposals of and any and all contracts with Westmark B.V., Westmark International B.V. and/or Westmark LLC (hereinafter each individually referred to as "Westmark") with regard to the delivery of movable Goods and/or the performance of Services as also to any and all Agreements in connection therewith.
- 1.2 In case of discrepancies between the general provisions and any special provisions agreed upon (if any), the special provisions shall prevail.
- 1.3 The applicability of (purchase) terms and conditions of the Client (whether or not through reference to or inclusion of the (purchase) terms and condition on a purchase order) is expressly rejected.
- 1.4 The Client can only rely on terms and conditions that differ from these Conditions if and to the extent that the said terms and conditions were accepted by Westmark in writing.
- 1.5 A Client with whom an Agreement has already been concluded on the basis of these Conditions agrees with the applicability of these Conditions to subsequent negotiations with and Agreements by and between the Client and Westmark.
- 1.6 "Goods" is understood as movable goods delivered by or on behalf of Westmark such as (but not limited to) CableSafe safety products, dropped objects prevention safety products, non-lethal self-protection products for merchant and fishing vessels (such as P-Trap) and Altruist sunscreen.
- 1.7 "Intellectual Property Rights" is understood as copyrights, related rights, drawing and model rights, database rights, patent rights, breeders' rights, trademark rights, trade name rights, topography rights, rights with regard to the protection of know-how and any and all other similar rights.
- 1.8 "Services" is understood as activities and/or work performed by or on behalf of Westmark.
- 1.9 "Documentation" is understood as any and all documents supplied to the Client by Westmark in conjunction with the Goods, including (where applicable) documents of third parties, in which the technical and/or functional specifications, and/or the user manual are included.
- 1.10 "Extreme Diseases" is understood as large-scale, contagious and/or otherwise extreme diseases, disease waves, epidemics or pandemics.
- 1.11 "Agreement" is understood as each and every written agreement with regard to the delivery of Goods and/or the performance of Services to the Client by Westmark.

### 2 NEGOTIATIONS WITH WESTMARK

- 2.1 These Conditions are also applicable to any and all discussions between Westmark and the Client with regard to the inventory of a potential Agreement (hereinafter referred to as: the "Negotiations"). Westmark is always authorized to break off the Negotiations without being liable to pay compensation or being held to continue the Negotiations.
- 2.2 If, before an Agreement is concluded in accordance with article 3.5, at the request of the Client Westmark already starts the performance of the Services or if the Client takes notes of the same but does not object to it in writing then the Client is held to pay the fee(s) already stipulated during the Negotiations or otherwise the fee(s) commonly calculated by Westmark. If an Agreement is unexpectedly not concluded then the Client shall reimburse the relevant Services up to the moment that Westmark discontinues the Services. As the occasion arises the said Services shall exclusively be performed subject to applicability of these Conditions.

## 3 PROPOSALS, CONTRACTS AND AGREEMENTS

- 3.1 Any and all offers or quotations of Westmark are subject to contract. Westmark can still revoke its offer shortly after receipt of the acceptance, unless the said offer contains a period for acceptance and the period has not expired yet.
- 3.2 Any and all offers of Westmark are of a confidential nature and can only be used by the Client during consultation with Westmark and/or for the benefit of a selection between Westmark and other providers in the course of which the other providers do not receive information from the offer of Westmark and/or obtain insight into the same.
- 3.3 Any and all offers of Westmark are based on correctness and completeness of the (technical) information, designs, drawings, calculations, specifications, etc. obtained from the Client. During the performance of the Services the Client shall supply the information, designs, drawings, etc. to Westmark in a timely fashion.
- 3.4 Contracts and acceptances of offers by the Client are deemed to be irrevocable.
- 3.5 Westmark shall only be bound when and as Westmark accepted a contract by means of an Agreement. Oral promises or arrangements by or with its staff shall not have binding effect on Westmark barring and in as much as Westmark confirmed them in writing.
- 3.6 Westmark is entitled to fully or partly outsource its obligations pursuant to the Agreement.
- 3.7 Unless the parties expressly stipulate otherwise in writing, Westmark shall, if it performs activities for the Client in the capacity of sub-contractor (or through a similar construction), never be bound by back-to-back applicability of (legal) terms and conditions in the relationship between the Client and (its) principal.

## 4 PRICE AND PAYMENT TERMS

- 4.1 Prices indicated by Westmark or stipulated with the Client are, unless indicated otherwise, in EUR and net, hence, inter alia, exclusive of VAT and exclusive of potential import and export duties, and are only applicable delivery ex office. Prices are, moreover, exclusive of the costs for packaging, shipment, insurance and installation.
- 4.2 If Westmark has taken on the packaging, shipment, insurance and/or installation without a price expressly having been stipulated for it in writing then Westmark shall be entitled vis-à-vis the Client to charge the actual costs and/or to charge the rates common at Westmark for this.
- 4.3 Prices indicated by Westmark or stipulated with Westmark are based on wages and cost prices at the time of the proposal or the acceptance of an Agreement by Westmark and on normal working hours, i.e. a normal working week (Monday up to and including Friday), and working times (08:00 o'clock until 18:00 o'clock). If the wages and/or cost prices are afterwards subject to an increase then Westmark is entitled to charge a corresponding price increase to the Client, in so far as this is reasonable and not stipulated otherwise in the Agreement.
- 4.4 Any and all Services that are performed outside the normal working hours are settled at the rates and surcharges established in the Agreement, departing from the normal working hours of Westmark. Any and all waiting hours, respectively downtime, for employees of Westmark caused by the Client are settled on the basis of the rates established in the Agreement.
- 4.5 Barring if and to the extent that a fixed price is expressly stipulated in writing, it is noted that the Services are performed on the basis of Time & Material(s) (in the course of which the Client therefore reimburses the hours actually worked by Westmark as well as the thereto-pertaining materials).
- 4.6 If a fixed price was stipulated and the Client intends to implement changes in or additions to the contract, then Westmark shall inform the Client of the consequences of the said changes and additions for the price.

4.7 Unless agreed otherwise in writing, payment shall be made by the Client to Westmark within 30 calendar days after the date of the invoice by Westmark without compensation or having the right to suspend payment.

4.8 Westmark is entitled, at any stage during the execution of an Agreement, to request security (by way of an irrevocable bank guarantee or similar security) in respect of any (payment) obligation of Client and is entitled to suspend its obligations until such security has been provided.

## **5 DELIVERY PERIODS, DELIVERY, ACCEPTANCE AND RETAINER OF OWNERSHIP**

5.1 Any and all (delivery) periods mentioned by Westmark are indicative and can never be qualified as fatal deadlines. The mere overstepping of a stipulated (delivery) period shall not cause Westmark to be in default. Westmark and the Client shall enter into discussions in case of an imminent overstepping of a (delivery) period. A delivery period takes effect after conclusion of the Agreement as referred to in article 3.5 and after the Client has supplied any and all data, documents, equipment, computer time and (office) space to Westmark and after a potentially stipulated advance payment has been received by Westmark or security for payment has been provided for the benefit of Westmark.

5.2 The Goods to be delivered by Westmark are deemed to have been delivered as soon as they have left the premises of Westmark or third parties hired by Westmark for shipment to or for the benefit of the Client. If the Client cannot or does not want to receive the Goods at the stipulated time then they are deemed to have been delivered at the time that they would have left the office had there not been an impediment on the part of the Client. As the occasion arises, Westmark shall be entitled to store the same at the expense of the Client.

5.3 Delivery periods are extended by the time that the implementation of the Agreement is delayed due to force majeure. The Client shall lend any and all stipulated and/or necessary cooperation in the performance of the Services of Westmark. Delivery periods are also extended by the time that the Client is later with the performance of an obligation than stipulated or later than can reasonably be expected by Westmark.

5.4 Westmark is entitled to deliver in instalments. For the purpose of these Conditions each and every partial delivery is qualified as an independent delivery.

5.5 All Goods delivered by Westmark shall, unless stipulated otherwise, be inspected by the Client within fourteen (14) days after delivery and subsequently be accepted and after remedy of potential errors.

5.6 The Goods supplied by Westmark shall remain property of Westmark until the Client has fulfilled all obligations in connection with the underlying or prior Agreement.

5.7 The Goods supplied by Westmark may only be resold by the Client in the course of its ordinary business. The Client is not authorised to pledge Goods or to establish any other right on them.

5.8 The Client is under the obligation upon first request by Westmark:  
-to insure the Goods supplied under ownership reservation and to keep the Goods insured against fire, explosion and water damage and against theft and to supply the policy from the insurance company for inspection; and  
-to pledge all claims of the purchaser to insurers concerning the goods supplied under ownership reservation in accordance with article 3:239 Dutch Civil Code.

## **6 (INTELLECTUAL PROPERTY) RIGHTS**

6.1 Unless expressly stipulated otherwise in writing, the Intellectual Property Rights on or in connection with the delivered Goods, Services and Documentation remain vested in Westmark and/or its licensors and said rights do not transfer to the Client. If these Conditions refer to the word "deliver" or conjugations of this word then

it cannot be inferred from this that a transfer of title or Intellectual Property Rights is intended.

6.2 If, in derogation from article 6.1, Westmark and the Client nonetheless expressly stipulate in writing that the Intellectual Property Rights as intended in article 6.1 are vested in the Client then in all instances it is noted that: 1) the said rights only transfer to the Client after the Client has paid everything that it is liable to pay pursuant to the underlying Agreement to Westmark in full, including damages, costs and interest, and that 2) only those rights are transferred of which this was expressly stipulated in writing.

6.3 Westmark indemnifies Client against any claim of a third party based on the allegation that Goods developed by Westmark itself infringe an intellectual property right of that third party, provided always that Client promptly informs Westmark in writing about the existence and content of the claim and leaves the settlement of the claim, including any arrangements to be made in this context, entirely up to Westmark. To this end, Client provides Westmark with the powers of attorney and information required and renders the assistance Westmark requires to defend itself against such claims. The indemnification obligation does not apply if and to the extent that a) the relevant infringement is related to changes that were made to the Goods by the Client or that were made by third parties (also including undertakings related to the Client, distributors, agents or subcontractors of the Client) without prior written consent of Westmark, b) it concerns an indirect infringement, c) the relevant infringement originates from a combination of the Goods with other products, d) the relevant claim is reported after expiry of a period of three years after delivery by Westmark to the Client, e) the infringement is related to a design, specifications or instructions of the Client or f) the infringement derives, either directly or indirectly, from unauthorised use by the Client of the Goods delivered by Westmark. If it is irrevocably established in court that Goods developed by Westmark itself should infringe any intellectual property right belonging to a third party, or if, in Westmark's opinion, there is a good chance that such an infringement will occur, Westmark ensures, if possible, that Client can continue to use, or use functional equivalents of, the Goods delivered. Any other or further obligation that Westmark might have to indemnify Client against any infringement of a third party's intellectual property right is excluded.

6.4 Westmark has the right to use the logo and (brand) name of Client for its external communication.

## **7 TRANSFER OF RISK AND TITLE, SECURITY**

7.1 Unless agreed otherwise in writing, delivery will be made ex works, Westmark's place of establishment, in accordance with the Incoterms 2020. The risk attached to the Good passes to the Client at the time Westmark makes the Goods available to the Client.

7.2 Notwithstanding the provisions in paragraph 1 of this article, the Client and Westmark may agree that Westmark will arrange for transport. In that event, the risk of storage, loading, transport and unloading will be borne by the Client. The Client may insure itself against these risks.

7.3 Irrespective of the agreed payment conditions, upon the first demand of Westmark the Client is obliged to provide such security for payment as Westmark deems sufficient. If the Client does not comply with such demand within the period set, it will immediately be in default. In that event, Westmark is entitled to terminate the Agreement and to recover its damage from the Client.

7.4 Westmark will retain ownership of any Goods delivered as long as the Client: a. fails or will fail in the performance of its obligations under the Agreement; b. has not paid debts that have arisen due to non-performance of the Agreement, such as damage, penalties, interest and costs.

7.5 As long as the goods delivered are subject to retention of title, the Client may not encumber or alienate the same other than in the ordinary course of its business.

- 7.6 Once Westmark has invoked its retention of title, it may take possession of the Goods delivered. The Client will lend its full cooperation to this end.
- 7.7 Westmark has a right of pledge and a right of retention in respect of all Goods that are or will be held by it for any reason whatsoever and for all claims it has or might acquire against the Client in respect of anyone seeking their surrender.
- 7.8 If, after the Goods have been delivered to the Client by Westmark in accordance with the Agreement, the Client has met its obligations, the retention of title will be revived with regard to such Goods if the Client does not meet its obligations under any agreement subsequently concluded.

## 8 FORCE MAJEURE

- 8.1 Westmark is entitled to rely on force majeure if the implementation of the Agreement is, whether or not temporarily, prevented or hindered either in whole or in part by circumstances reasonably beyond its control, including acts, rules or decisions of an official authority, natural phenomena, e.g. earthquakes and flooding, fires, riots, wars, company lockouts, industrial action, punctuality and exclusion actions, delayed delivery to Westmark of parts, goods or services ordered with third parties, failures in networks, systems and/or connections of the Client, customers of the Client and/or suppliers of the Client or Westmark, sickness of employees, outbreaks of Extreme Diseases, accidents and business interruptions and failures in the computer equipment of Westmark and/or the Client.
- 8.2 In case of force majeure on the part of Westmark, its obligations are suspended. If the force majeure has continued for more than three (3) months then Westmark is authorised to dissolve ("ontbinden") the Agreement in whole or for the part that has not been implemented without thus being liable to pay damages and without prejudice to the provisions otherwise set forth in these Conditions.

## 9 LIABILITY, INDEMNIFICATION AND INSURANCE

- 9.1 In all instances where Westmark is held to pay compensation for damages, irrespective of the legal basis of the liability (unlawful act, failure to comply with the Agreement or otherwise), and in all instances per event or series of events with a common cause, it shall be limited to the amount recoverable under the insurance policies of Westmark in place at the time such liability evolved. Westmark took out liability insurance and will maintain this to the extent that this is necessary and common according to the practice in the industry. The Client is not included in the insurance of Westmark as a co-insured party. A copy of the insurance policies will be made available to the Client upon written request.
- 9.2 In the event no insurance coverage can be obtained by Westmark due to any act or omission of Westmark, the liability of Westmark as referred to in paragraph 9.1, shall be limited to direct loss or damage, suffered by the Client, with a maximum of the order value (excluding VAT) of the Agreement in the execution of which the loss or damage occurred with an aggregate limitation of Euro 50,000.- (fifty thousand Euro). In case of a continuing performance Agreement, Westmark's liability shall be limited to the amount (excluding VAT) that was invoiced by Westmark and that was paid by the Client for Services performed in the period of six (6) full calendar months prior to the harmful fact, on the basis of the continuing performance Agreement in pursuance of which the liability arises, with an aggregate limitation of Euro 50,000.- (fifty thousand Euro). In no event, but unless covered by any insurance coverage as referred to in paragraph 9.1, shall Westmark be liable for any indirect loss or damage. For the purpose of these Conditions, "indirect loss or damage" shall mean: loss of profit, loss of revenue, lost opportunities, reduced goodwill, losses due to business interruptions (also including damages as a result of a breakdown of machines or production lines) and depletion of staff, damages as a result of claims of customers of the Client, compensations or penalties payable to third parties, loss of value or

- loss of products, damages related to the use of goods, materials of third parties prescribed to Westmark by the Client, damages as a result of recall actions ('recalls') and damages related to the reliance on suppliers prescribed to Westmark by the Client.
- 9.3 Limitations of liability for the benefit of Westmark as included in these Conditions, including this article 9, are not applicable if and to the extent that the incurred damages are caused by intent or consciousness recklessness of Westmark or its own managerial staff.
- 9.4 The Client indemnifies Westmark against any and all claims, actions or proceedings of third parties on account of product liability as a result of a defect in the Goods that were delivered to a third party by the Client and that partly consisted of Goods delivered by Westmark, barring and to the extent that it is established in court that the damages are caused by the Goods delivered by Westmark. The applicability of Section 404 of Book 7 of the Dutch Civil Code is expressly excluded.
- 9.5 If in addition to compensation the parties agreed on a penalty then the potentially forfeited contractual penalties and amounts paid and/or to be paid pursuant to indemnifications shall be deducted from the potential compensation in connection with the same event.
- 9.6 Each and every claim vis-à-vis Westmark, barring a claim that is recognized by Westmark, expires due to the mere lapse of a period of six (6) months after the occurrence of the claim.
- 9.7 Conditions that limit, exclude or determine liability, which can be imposed on Westmark by the suppliers or subcontractors of Westmark in connection with the delivered goods, can equally be imposed on the Client by Westmark.
- 9.8 The employees of Westmark or auxiliary persons hired by Westmark for the implementation of the Agreement can rely on any and all remedies pursuant to the Agreement vis-à-vis the Client as if they were a party to the Agreement.
- 9.9 The Client acknowledges that Goods may be subject to certain import and export checks and only the Client shall in this respect be responsible for obtaining any and all relevant authorizations and permits and is, particularly, responsible for the fact that its use of the goods delivered by Westmark complies with, and does not result in a violation of, relevant legislation and regulations in the area of import and export, including those of the (Export Administration Regulations of the) US Department of Commerce. The Client confirms that the obligations set forth in this article shall also remain in full force and effect after the end of the Agreement and indemnifies Westmark against any and all claims, damages and costs as a result of a violation by the Client of this article 9.9.
- 9.10 Barring a written arrangement to the contrary or barring different mandatory statutory provisions, the Client is personally responsible for obtaining and placing CE marking or similar certifications that are imposed pursuant to applicable Dutch, European or other applicable legislation and regulations and only the Client is responsible for compliance in connection therewith and the Client indemnifies Westmark against any and all claims of third parties in connection therewith.
- 9.11 The Client commits to always comply with (commercial and financial) export restrictions that were imposed on certain countries by, in particular, the European Union, the United States and the United Nations and the Client shall therefore not resell products to natural persons or legal persons who were included on a list of sanctioned parties. The Client confirms that the obligations set forth in this article shall also remain in full force and effect after the end of the Agreement and indemnifies Westmark against any and all damages and claims as a result of a violation by the Client of this article 9.11
- 9.12 The Client shall personally examine whether safety and similar measures are required in the context of the Goods or Services to be provided by Westmark in view of the reduction of bodily harm or other damages and shall, where required, take these kinds of measures in a timely and sufficient fashion (prior to the delivery of the Goods or start of the Services). The Client indemnifies Westmark against any

and all damages (including costs of the lawyer of Westmark) that Westmark incurs as a result of a violation by the Client of the obligations set forth in this article 9.12.

- 9.13 The exclusions and limitations of liability as intended in this article 9 shall not affect the other exclusions and limitations of liability of Westmark on account of these Conditions, which shall remain in full force and effect.

## **10 WARRANTY**

- 10.1 Westmark warrants that the Goods shall perform in accordance with their (technical) specification in place for the Goods (irrespective of whether or not communicated with the Client) for a period of 365 calendar days after delivery to the Client in accordance with article 5 of these Conditions. After expiration of this period, no warranties howsoever named, shall exist. In the event of Services, Westmark warrants the execution thereof in accordance with common industry standards.
- 10.2 If the agreed performance was not properly executed, Westmark has the right to decide whether to remedy (by repair or replacement) or to credit the Client for a proportionate part of the corresponding invoice amount. If Westmark chooses to remedy the performance, the manner and time of execution is up to the sole discretion of Westmark. If the agreed performance consisted (entirely or partially) of the processing of material provided by the Client, the Client must provide new material at its own risk and expense.
- 10.3 Parts or Goods that are repaired or replaced by Westmark must be sent to Westmark by the Client.
- 10.4 The Client bears the expense of: i. all costs of transport or dispatch; ii. costs of disassembly and assembly; iii. travel and accommodation expenses.
- 10.5 The Client must in all cases offer Westmark the opportunity to remedy any defect.
- 10.6 The Client may only invoke the warranty once it has satisfied all its obligations to Westmark.
- 10.7 a. No warranty is given if the defects result from: - normal wear and tear; - improper use (including use of the Goods for which they are not meant); - lack of maintenance or improper maintenance; - installation, fitting, modification or repair by the Client or third parties; - defects in or unsuitability of goods originating from, or prescribed by, the Client; - defects in or unsuitability of materials or auxiliary materials used by the Client. b. No warranty is given in respect of: - Goods supplied that were not new at the time of delivery; - the inspection and repair of goods of the Client; - parts for which a manufacturer's warranty has been provided.

## **11 ALTERATION AND EXPANSION OF SERVICES AND/OR DELIVERIES**

- 11.1 If Westmark has performed work, other services or other deliveries outside the content or scope of the agreed matters at the request or with the consent of the Client, Westmark shall receive payment for such work, service or deliveries in accordance with its customary rates or, if a fixed price has been agreed, the additional costs shall be charged. However, Westmark shall not be under obligation to meet such a request and may require conclusion of a separate written agreement.
- 11.2 The Client accepts that alteration or expansion of the work, services or deliveries within the meaning of this article may affect the agreed or expected time of completion of obligations, mutual responsibilities of the Client and Westmark and agreed rates of Westmark.

## **12 OBLIGATIONS UNDER GDPR**

- 12.1 Parties shall afford each other every cooperation to enable the other Party to fulfil its obligations under the General Data Protection Regulation.
- 12.2 In all instances the Client shall inform Westmark timely and properly of whether data processing for the purpose of an Agreement falls

under the General Data Protection Regulation and whether the Dutch Data Protection Authority or the data protection officer of the Client has been notified of the processing. The Client shall reimburse Westmark for any work and/or costs necessary in respect of obligations mentioned in this article 12.2.

- 12.3 The Client shall ensure that the person with responsibility for data protection within the meaning of the General Data Protection Regulation fulfils all obligations under the Act. The Client shall indemnify and hold harmless Westmark for all and any claims lodged by third parties against Westmark under the General Data Protection Regulation.

## **13 DISPUTES AND APPLICABLE LAW**

- 13.1 Any and all disputes that arise between the parties shall exclusively be settled by the competent court in Utrecht, location Utrecht, The Netherlands.
- 13.2 The relationship between the parties is, also during Negotiations, exclusively subject to Dutch law, with the exclusion of the rules regarding the choice of applicable law pursuant to the rules of international private law. The applicability of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) is expressly excluded.