

Article 1 General

1. These Terms and Conditions apply to every offer, tender and contract between InMarkt Retail B.V., hereinafter referred to as 'IMR' and a Client. The applicability of the Client's full Terms and Conditions is hereby expressly excluded, insofar as the parties do not deviate expressly and in writing from these Terms and Conditions.
2. These Terms and Conditions also apply to contracts with IMR for which it must involve any third parties.
3. In the event of any uncertainty regarding the interpretation of one or more clauses in these Terms and Conditions, the relevant clause or clauses must be interpreted in line with the intent of this clause or these clauses.
4. In the event of any situation arising between the parties which is not provided for in these General Terms and Conditions, the situation must be interpreted in line with the intent of these General Terms and Conditions.
5. The fact that IMR might not continually require strict compliance with these Terms and Conditions does not mean that the clauses therein are not applicable or that IMR loses any right to require strict compliance with these Terms and Conditions in other situations.

Article 2 Tenders

1. All IMR offers and tenders are non-binding and are valid for 30 days, unless a different validity is included in the relevant offer or tender. A tender or offer expires if the relevant product becomes unavailable before acceptance of the tender or offer.
2. If the acceptance deviates in any part from the content of the tender or offer, then IMR cannot be held to this deviating acceptance. In such an event there will be no contract, unless indicated otherwise by IMR.
3. In the event of a combined estimate, IMR cannot be held to the performance of any part of the relevant assignment for the relevant price of that part. Tenders and offers do not automatically apply to future assignments.
4. Measurements, weights, images, drawings, technical and/or chemical specifications, types, quantities, compositions and qualities included in the offer or tender are approximate.
5. IMR cannot be held to its tender or offer if the Client may reasonably understand that the tender or offer, or any part thereof, includes an obvious error or typo.

Article 3 Price

1. All prices quoted by IMR are ex warehouse, unless indicated otherwise. All prices and amounts are ex VAT and other government taxes/levies, unless indicated otherwise by IMR.
2. An increase in VAT or other government taxes/levies may always be charged. Any increase in other costs incurred by IMR in part due to the performance of a contract within three months after creation of said contract, such as an increase in purchase prices, may also be charged by IMR.
3. During the contract, IMR is entitled to change the price due to price developments. Price developments include changes to taxes, levies, salaries, social security contributions, exchange rates, energy prices and other circumstances which result in higher costs for IMR. Any change to the contract will enter into force within one month of its announcement. If the Client does not agree with any price change, it may terminate the contract with IMR in writing within eight days of the relevant change announcement, which termination will enter into force on the date the relevant change enters into force.

Article 4 Contract Term, Performance and Changes

1. Both parties may terminate the contract in writing before the end of the contract term or in accordance with a notice period of two months in case the contract was entered into for an indefinite term. If the Client terminates the contract, it must compensate IMR for any related costs it incurs.
2. An agreed or indicated term for any activities or deliveries is never a final date. If IMR exceeds a term, the Client must send IMR a written notice of default. Herein, IMR must be given a reasonable period in which to perform the contract.
3. IMR may involve third parties to perform certain activities.
4. IMR may perform the contract in stages and invoice separately for performed stages of the contract.
5. If it becomes clear during the performance of the contract that the contract needs to be changed to enable proper performance, then parties will consult timely on any relevant change. IMR will provide any estimated price increases or reductions beforehand, where possible. The Client accepts the option of changes to the contract, including its price and term.
6. If the contract is changed or supplemented, IMR may suspend performance of this change or supplement until the competent employee of IMR and the Client agree on the indicated price and other Terms and Conditions, including the date of the performance.

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7. The Client must provide IMR timely with all data needed for IMR to perform its activities appropriately. The Client is responsible for the correctness of this data. In the event of a delay in the performance of the contract which is attributable to the Client, all related costs and damages will be at the expense and risk of the Client. The agreed delivery term is not a final date. The delivery term starts at the creation of the contract as long as all required data has been received and any desired payment guarantee has been provided.
8. IMR may offset all claims it has towards the Client against the amounts it owes to the Client.

Article 5 Delivery

1. Deliveries must be collected upon IMR's indication, unless indicated otherwise in the contract.
2. If products cannot be collected during the performance of the contract, these products will be stored at the expense and risk of the Client. These expenses, being € 12 a week per pallet, may be charged by IMR until the relevant products are collected.

Article 6 Suspension, Dissolution, Early Termination and Cancellation of the Contract

1. IMR may dissolve the contract in the event of circumstances which render performance of the contract impossible or which render performance of the unchanged contract unreasonable.
2. If the dissolution is attributable to the Client, the Client is liable for the damages and must compensate IMR for these damages.
3. If the Client cancels the contract, it must compensate IMR for the costs it has incurred or will incur and the damages, up to a reasonable amount, without prejudice to IMR's right to claim compensation of damages if and insofar as the damages surpass the reasonable amount. The reasonable amount is determined using the standards below:
 - a. In the event the Client cancels the contract more than or exactly fifteen (15) days prior to start of the activities: No cancellation costs.
 - b. In the event the Client cancels the contract less than fifteen (15) days prior to start of the activities: **€ 595** (ex VAT) for the incurred POS materials costs.

Article 7 Force Majeure

1. IMR cannot be held to performance of any obligation towards the Client if it is impeded herein by a circumstance which is not attributable to IMR and for which it cannot be held responsible by any law, legal act or public opinion.
2. For the purpose of these General Terms and Conditions, force majeure is interpreted not only as prescribed by law and case law, but also as all external circumstances, foreseeable or not, which IMR cannot influence but which impede IMR's ability to fulfil its obligations. Moreover, IMR may rely on force majeure if the circumstance impeding any or further performance of the contract occurs after IMR should have fulfilled its obligations. Force majeure includes fire, theft, molestation, insurgency, strike, occupation, breakdown, war, severe weather, situations in which the work site is inaccessible, changes to regulations and failure to comply by an IMR supplier.
3. IMR may suspend its obligations under the contract for the duration of the force majeure. If the force majeure lasts more than two months, either party may dissolve the contract without any obligation to compensate damages suffered by the other party.
4. Insofar as IMR fulfilled or will be able to fulfil any part of its obligations under the contract at the start of the force majeure, and insofar as the fulfilled or to be fulfilled part carries any independent value, it may invoice this part separately. The Client must pay this invoice as if it were a separate contract.

Article 8 Payment and Collection Charges

1. Payment must be carried out within 14 days of the invoice date, in Euros and in the manner stipulated by IMR, unless indicated otherwise by IMR. IMR may invoice periodically.
2. If the Client fails to pay an invoice timely, this constitutes an ex officio penalty. In such an event, the Client will owe an interest of 1% per month, unless the legal (commercial) interest is higher, in which case the Client will owe the legal interest. The interest on the amount to be paid is calculated from the moment the Client should have paid the invoice until the moment the Client has paid the invoice in full.
3. Any objections to the amount of an invoice do not suspend the relevant payment obligation. The Client that cannot rely on Title 5, Section 3, Book 6 (Articles 231 through 247) of the Dutch Civil Code, is not entitled to suspension of payment of an invoice for any other reason.
4. All costs incurred by IMR due to the failure by the Client to fulfil at all, fulfil timely or fulfil appropriately any of its obligations under this contract are at the expense of the Client. These costs will be at least 15% of the principal amount, with a minimum of € 150.

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5. Any payment is firstly offset against the current interest, secondly against the collection charges and thirdly against the principal amount owed. This also applies if the Client stipulates a different order of application of the payment. IMR cannot be in default for deviating from the order of application of a payment.
6. If and insofar as the Client fails to pay and in the event of its bankruptcy, placement into administration, cessation of activities or liquidation, all claims IMR has against the Client immediately become exigible.
7. Upon IMR's request, the Client is obligated to set securities or provide bank guarantees for all claims IMR has against the Client under this contract or otherwise.

Article 9 Retention of Ownership

1. All drawings and designs provided by IMR to the Client will remain the property of IMR. These drawings and designs may not be copied, in part or in full, without prior written consent from IMR except for internal use by the Client.
2. All items delivered by IMR under the contract(s) remain the property of IMR until the Client fulfils all its obligations under its contract(s) with IMR.
3. The Client is obligated to store the items which fall under the retention of ownership for IMR with due care and as recognisable IMR property.
4. Items delivered by IMR which fall under the retention of ownership may never be sold or used as payment. The Client may not pawn or charge any items which fall under the retention of ownership.
5. The Client must always do everything reasonably possible to secure IMR's ownership.
6. If any third party seizes any items which fall under the retention of ownership or tries to charge any claim on these items, the Client must inform IMR of this immediately.
7. In the event that IMR wishes to exercise its right of retention, the Client gives the User and any third parties involved by IMR unconditional and irrefutable permission to enter all locations where IMR property is held and to reclaim such property.

Article 10 Intellectual Property

1. The IE rights relating to the IMR website and the products under the contract as well as information made accessible, such as texts, look-and-feel, templates, video material, audio material, photographic material and imagery remain with IMR and/or its licensors.
2. Under these Terms and Conditions, IMR provides the Client with a limited, revocable, non-exclusive, non-sublicensable and non-transferable right to access to the website, necessary products and information during the contract.
3. None of these Terms and Conditions are meant to transfer any IE rights to the Client or to relinquish any IE rights.

Article 11 Guarantees, Checks & Claims and Term of Limitation

1. The items to be delivered by IMR comply with the usual, reasonable requirements and standards applicable for normal usage at the time of delivery in the Netherlands. The guarantee set out in this Article applies to items to be used in the Netherlands. In the event of usage outside the Netherlands, the Client must verify whether the items can be used properly and comply with local requirements. There is no guarantee for products used outside of the Benelux, unless an additional guarantee is agreed upon.
2. The guarantee set out in Section 1 is valid in the Benelux for two weeks after delivery, unless the nature of the delivered item(s) results in a different term or the parties have agreed otherwise. If the guarantee provided by IMR applies to an item produced by a third party, then this guarantee is limited to the guarantee provided by the producer, unless indicated otherwise.
3. Any guarantee is void if a defect arises as the result of injudicious or incorrect usage, usage after the expiry date, incorrect storage or maintenance of the item by the Client and/or any third party if, without the written consent of IMR, the Client or any third party changed or tried to change the item, added items to the item which should not have been added or processed/adapted the item in deviation from the prescribed manner of processing/adaptation. Moreover, the Client cannot rely on the guarantee if the defect arises due to or as a result of circumstances outside IMR's control, including weather conditions (such as extreme rainfall or abnormal temperatures).
4. The Client must check the delivered item/items the moment it is/they are made available to the Client or the relevant activity/activities is/are performed. This check must include whether the quality and/or quantity of the delivered item/items complies with the contract and the conditions agreed upon therein by the parties. Any visible defects must be reported in writing to IMR within seven days of delivery. Any invisible defects must be reported in writing to IMR immediately, but at least within fourteen days of their discovery. The relevant report must describe the defects as detailed as possible, thereby enabling IMR to respond adequately. The Client

must allow IMR to investigate any complaint.

5. Timely claims by the Client do not suspend its payment obligation. In the event of any claims, the Client must nonetheless accept and pay the item(s) ordered.
6. If a defect is reported after the period above, the Client is not entitled to repair, replacement or compensation.
7. If it is determined that an item is defective and the Client has made a timely claim thereupon, IMR will, within a reasonable term, return the item or, if return is reasonably impossible, within a reasonable term of a written report on the defect by the Client, replace or repair the item or compensate the Client for the defective item. In the event of replacement of a defective item, the Client must return it and ownership of it to IMR, unless indicated otherwise by IMR.
8. If it is determined that a complaint is unjustified, the relevant costs, including the costs of investigation, made by IMR will be charged in full to the Client.
9. After the term of limitation, all costs of repair or replacement, including handling, shipping and call-out costs, will be charged to the Client.
10. In deviation from the legal terms of limitation, the term of limitation for all claims and appeals on IMR and any third parties involved in the performance of a contract by IMR is one year.

Article 12 Liability

1. If IMR is liable, then this liability is restricted to the conditions set out in this Article.
2. IMR is not liable for any damages which are the result of incorrect and/or incomplete information provided by the Client.
3. If IMR is liable, then this liability is limited to the related amount paid out per occurrence by IMR's corporate liability insurance. If the maximum insured amount surpasses the principal amount, then IMR is only liable for the amount related to the products delivered.
4. IMR is only liable for direct damage.
5. Direct damage only includes the reasonable costs of determining the cause and scope of the damage insofar as the determination relates to damage as set out in these Terms and Conditions; reasonable costs made to have IMR's sub-standard performance comply with the contract, insofar as these are attributable to IMR; and reasonable costs made to prevent or reduce damage, insofar as the Client proves that these costs have led to a reduction of direct damage as set out in these General Terms and Conditions.
6. IMR is never liable for indirect damage, including consequential damage, loss of profits, missed savings and damage from corporate stagnation.
7. The restrictions of liability set out in this Article do not apply if the damage is a result of intent or gross neglect by IMR or its managerial employees.

Article 13 Transfer of Risk

1. The risk for loss, damage or depreciation transfers to the Client at the moment that IMR indicates that the delivery must be collected or at the moment that the delivery is collected.

Article 14 Confidential Information and Personal Data

1. The Parties are obligated to keep all confidential information they receive about the other party's business confidential. The same applies to any third parties involved.
2. Information is confidential when a party indicates it is.
3. When IMR acts as the Controller of personal data in accordance with the General Data Protection Regulation (GDPR), the following conditions apply:
 - a. IMR is responsible for the protection of personal data which it must use in order to perform the contract correctly.
 - b. When IMR processes personal data on the Client, it will do so with the utmost honesty and care, and in accordance with the GDPR.
 - c. IMR only uses personal data insofar as this is necessary to be of service to the Client. The personal data will not be stored longer than legally allowed or longer than necessary for the establishment and performance of the contract.
 - d. IMR takes technical and organisational measures to guarantee an appropriate level of security for personal data, in accordance with the current technical opportunities and the nature of the processing.
5. If an involved party wishes to exercise one of its rights under the GDPR, then this request may be submitted in writing to info@inmarkt.com. IMR will take this request into consideration within the relevant legal term.
6. IMR will not provide personal data to any third party and will only provide personal data insofar as necessary for its performance of the contract or for its compliance with a legal obligation. If IMR provides personal data

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to any third party for other reasons than the ones described above, it will first request the consent of the relevant involved party.

Article 15 Applicable Law and Disputes

1. The contract between IMR and the Client is governed by Dutch law.
2. Disputes relating to a contract between IMR and the Client which cannot be resolved amicably will be heard by the authorised court of law within the district in which IMR is registered, unless IMR prefers the authorised court of law within the district in which the Client resides to hear any dispute.

Article 16 Location and Amendment

1. The Dutch version of these Terms and Conditions is always decisive in terms of the interpretation thereof.