

General Terms and Conditions for Watter B.V.



Artikel 1. Definitions

- Watter: the private company with limited liability Watter B.V., with their registered office in Tynaarlo, registered in the Commercial Register of the Chamber of Commerce under number 01128905.
- Counterparty: any party that enters into a contractual relationship of any kind with Watter.
- Parties: Watter and Counterparty collectively.

Artikel 2. Establishment of agreement and amendments

- Watter is not obligated to fulfil accepted quotations when these are based on obvious clerical errors.
- Counterparty's acceptance of a Watter quotation accompanied by a declaration of the applicability of the general (purchasing) terms and conditions of Counterparty (whether or not excluding the Watter general terms and conditions) has no force insofar as these state the applicability of the requirements of Counterparty and/or exclusion of the Watter terms. The provisions of the following paragraph shall remain in full force.
- The general (purchasing) terms and conditions of Counterparty are explicitly rejected by Watter.
- These general terms and conditions shall apply to all current and future legal relations between Watter and Counterparty.
- Amendments to the agreement (including to the general terms and conditions) between Parties can only be substantiated in writing. Deviating clauses shall apply only to the agreement in which the deviating clauses are drawn up.
- Amendments in the make-up of the order will result in changes in the time of delivery. If Counterparty changes its order, Counterparty accepts beforehand the change in time of delivery.

Artikel 3. Delivery and risk

- The products are delivered "Ex Works" (EXW) as defined in Incoterms 2020 from an address to be designated by Watter, unless otherwise agreed in writing.
- If products cannot be received due to force majeure or failure on the part of Counterparty's to fulfil their obligation to pick up goods, or in any case cannot be transported to the place of destination, Watter has the right to store these products at the expense and risk of Counterparty and to demand payment without Counterparty having a right to suspension of payments.
- The loss or damage of goods after the risk has passed to the Counterparty, does not release the Counterparty from the obligation to pay for goods, unless the loss or damage is entirely attributable to an intentional act or gross negligence on the part of Watter.
- Specified or agreed delivery times are approximate and never a strict deadline.
- Counterparty is not entitled to terminate the contract after Watter failed to deliver goods within the agreed delivery term before Counterparty has specified a reasonable time in writing for Watter to complete the delivery, and this delivery does not occur within this period.
- Counterparty is not entitled to terminate the agreement if the late delivery is (also) attributable to the Counterparty.

Artikel 4. Unfeasibility of assignment and force majeure

- Watter has the right to suspend its fulfilment of obligations if temporarily prevented from fulfilling obligations due to circumstances that had not been foreseen on entering the agreement and that are beyond its control.
- Circumstances that Watter cannot expect and are beyond its control include: circumstances where suppliers and/or Watter subcontractors do not fulfil their obligations or are late, weather, earthquakes, fire, loss or theft of tools, the loss of materials to be processed, defective machines, roadblocks, strikes or work stoppages and import or trade restrictions.
- Watter is entitled to terminate the agreement if it is unable to meet its obligations due to a circumstance stipulated in paragraph 1 of this article. If Watter suspended its obligations for a term longer than six months due to a circumstance stipulated in paragraph 1 of this article then Counterparty has the right to cancel the part of the agreement that was suspended.
- Watter is not liable for damages arising from termination or suspension under this Article.

Artikel 5. Retention of title

- Watter retains all property for all delivered and yet to be delivered products until the moment that Counterparty has settled all outstanding and future obligations with Watter, including the obligation to compensation for interest and other (collection) costs, and, if any, damages, and compensation for delivered services.
- In the event that it is ascertained that products have retention of title under the aforesaid paragraph, the administration maintained by Watter is binding in determining title between Parties.

Artikel 6. Prices

- Unless explicitly stated otherwise, prices on quotations and agreements or any other Watter documents are specified in euros, exclusive of VAT, and, if any, import duties, and other taxes, levies and duties.
- Unless otherwise stated in the agreement between Watter and Counterparty, Watter may pass on an increase in cost-determining factors that arose after entering the agreement with Counterparty if the agreement has not yet been fulfilled at the time of the increase.

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Artikel 7. Payment and demandability

- Unless otherwise agreed in writing, payment must be made in advance by bank transfer. The cost of money transfer shall be borne by Counterparty.
- If payment has not been made within the agreed payment term, Counterparty must pay interest to Watter as of the date of the expiration of the payment term. The interest rate is 1% per month.
- The Party is liable for all actually incurred costs by Watter (both in and out of court) related to the collection of its claims against Counterparty.
- All compensation owed to Watter by Counterparty is immediately due if Counterparty: exceeds a payment term, is declared bankrupt (or equivalent as used in another country), requests suspension of payment (or equivalent), property or assets are seized, (as a company) is dissolved or liquidated or ceases business operations, (as a natural person) submits a request for debt adjustment to the court (or equivalent), is placed under curatorship or dies.
- The right of Counterparty to settle its claims against Watter with any payment obligations towards Watter is excluded on any account whatsoever.

Artikel 8. Guarantees and indemnification

- The products to be delivered by Watter meet the usual requirements and standards that can be reasonably made for normal use in the Netherlands at the time of delivery.
- Watter is not responsible for the manner in which Counterparty uses the disinfectant produced by the product, including, but not limited to, (the manner of) mixing of the disinfectant.
- Watter is not liable for damages if its products do not meet the requirements and regulations of the Counterparty's territory of activity. This includes, but is not limited to, legislation, required permits, tax matters and import regulations.
- Counterparty indemnifies Watter for any claim by third parties on the grounds that the products do not comply with the laws and regulations at the Counterparty's territory of activity.
- Except in the case of intentional or gross negligence on the part of Watter, Counterparty indemnifies Watter and shall reimburse Watter concerning all claims, demands and legal actions that a third party may have or initiate against Watter and that directly or indirectly arise out of or relate to the agreement, products supplied or services performed or to be performed by or on behalf of Watter for Counterparty, or are otherwise related to the agreement between Counterparty and Watter.
- Watter provides a full warranty of 12 months on the Watter machine. This shall not apply if the defects are caused by improper or inappropriate handling or use, maintenance not performed by Watter, or if the product has been incorrectly used or used for purposes other than intended. Watter is not liable for damages caused by the delivered goods that are a result of climatic or other external influences.

Artikel 9. Inspection of products and term for claims

- Counterparty is obligated to ensure products are inspected before or during the delivery. Visible or otherwise apparent defects different from what is agreed that are reasonably recognisable through inspection should be communicated in writing to Watter, preferably directly after the inspection, but no later than five days after delivery of the products.
- If Counterparty fails to notify Watter in writing of the deficiency within the term specified in this article, Counterparty loses the right to invoke any legal consequences arising from the defect or deviation from what was agreed..
- If it is established that an item is deficient and a claim is made in a timely manner, Watter will, at its own discretion, replace or ensure repair of item or maximally reimburse Counterparty the purchase price of the deficient item within a reasonable term after return receipt of item or receipt of written notification by Counterparty of the deficiency when a return is not possible.
- If a complaint is unfounded, all related costs incurred by Watter, including any research costs, are borne entirely by the Counterparty.
- Claims do not give Counterparty the right to suspend or reduce its obligations under the agreement.

Artikel 10. Suspension and termination

- Watter has the right to suspend its fulfilment of obligations under the agreements if Counterparty does not fulfil all of its obligations under this and previous agreements, including the obligation to provide the agreed purchase price, unless otherwise agreed in writing payment in advance was settled with Watter.
- In addition to the rights of termination arising from the law and agreement, Watter has the right to terminate the agreement without the necessity of court proceedings if Counterparty: is declared bankrupt (or equivalent), requests suspension of payment (or equivalent), ceases or intends to cease business operations.
- To the extent that the other party has the right to dissolution, it is limited at this time to the order or part thereof that is deficient and attributable to Watter. In this event, Parties are obligated to undo all completed exchanges from both sides that relate to the respective order or part thereof. The right of cancellation does not apply to subsequent orders and/or deliveries.

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Artikel 11. Liability

- Except in cases of intentional or gross negligence on the part of Watter, Watter is never liable for damages resulting from deficiencies in or on products sold, services rendered or work performed, by the Counterparty as well as third parties. In addition, Watter is not liable for errors made by personnel or by third parties engaged by Watter in the context of the performance of the agreement, unless these result from intentional or deliberate recklessness.
- Watter's liability in all cases is limited in each case to the amount that its liability insurance pays for the case in question, but, in the case of liability for a breach of an agreement to deliver, shall not exceed the invoice amount for the relevant order.
- Watter is only liable for direct damages. Direct damages are understood to mean the reasonable costs incurred to determine the cause and extent of damage, insofar as the determination relates to damage referred to in this subsection, and any reasonable costs incurred to redress Watter's shortcoming in satisfying the agreement, insofar as this can be attributed to Watter, and reasonable costs, incurred to prevent or limit damage, insofar as Counterparty demonstrates that these expenses resulted in mitigation of direct damage.
- Watter is never liable for indirect damages including, but not limited to, lost profits, lost savings, business stoppages, personal injury and damage to third parties, including the case of non-performance or improper performance of a repair obligation.
- Watter is never liable for damages arising from deficiencies in the product if Watter is not specified as the manufacturer on the product.
- Watter is never liable for damage if:
 1. the products are not installed correctly in accordance with the user manual;
 2. the products are not maintained correctly in accordance with the user manual;
 3. the products are not used correctly in accordance with the user manual, including, but not limited to the use of other salt tablets than prescribed by Watter and the use of other water than from the mains water system;
 4. the products have been altered, modified or repaired by any party other than Watter;
 5. the disinfectant is used for purposes other than as a disinfectant or re-sold to territories where it is in breach of local legislation at the time of sale;
- The limitation of liability in this article is also applicable to the guarantees provided for in Article 8.

Artikel 12. Prohibition on sales

- Unless agreed in writing, Counterparty is prohibited from making the disinfectant as produced by the machine available to third parties for payment or free of charge.

Artikel 13. Confidentiality

- Counterparty is obligated to keep confidential any confidential information obtained in the context of the agreement or obtained from another source under penalty of a fine that is immediately due of € 10,000.-- per occurrence, without prejudice to the right of Watter to claim additional damages.
- Watter has the right, including for commercial purposes, to disclose the name of Counterparty as its trading partner to third parties..

Artikel 14. Notices and announcements

- All notices and announcements from Counterparty intended for Watter that pertain to legal action must be in writing and sent by registered post.

Artikel 15. Applicable law and competent court

- Only Dutch law applies to all legal relationships in which Watter is a party, including when an agreement is entirely or partially performed abroad or the party involved in the legal relationship is domiciled abroad. Evidence from another agreed upon legal system can only be provided with a written document signed by both parties.
- The Vienna Sales Convention (CISG) does not apply.
- Unless otherwise mandatorily determined, the civil court in Assen has exclusive jurisdiction over disputes arising from agreements between Watter and Counterparty. However, Watter is free to submit a dispute arising from agreements between Watter and Counterparty to any court for judgment, which in the absence of a choice of forum would be empowered to rule on the dispute.
- "In case of differences in interpretation between the Dutch version and a translation of the general terms and conditions, the Dutch version of the general conditions takes precedence."