

TERMS AND CONDITIONS OF CONTRACT AND DELIVERY

KINGSPAN LIGHT + AIR NL B.V. /KINGSPAN LIGHT + AIR PRODUCTION NL B.V.

ARTICLE 1. DEFINITIONS

In these Terms and Conditions (hereinafter the 'Conditions') the following terms have the following meaning:

- Kingspan: the private limited liability companies Kingspan Light + Air NL Kingspan B.V., Kingspan Light + Air Production NL B.V. and all affiliated companies, their staff and third parties, be it natural persons or legal entities, engaged by it in the performance of any contract to which it is a party;
- Customer: any natural person or legal entity with whom Kingspan enters into a contract or with whom Kingspan is negotiating such a contract regarding the delivery of a performance by Kingspan;
- Delivery Period: the period agreed in any contract within which products or services will be delivered.

ARTICLE 2. APPLICABILITY

- 2.1 These Conditions apply to all communications and offers of and contracts and all obligations arising therefrom with Kingspan regarding the delivery of a performance by Kingspan.
- 2.2 Should the English translation of these Conditions be used and should this result in uncertainty regarding the interpretation of that translation, the interpretation of the corresponding clauses in the original Dutch version of these Conditions will prevail in the context of that interpretation.
- 2.3 Kingspan expressly rejects the applicability of any general or specific terms and conditions or provisions of the Customer or third parties.
- 2.4 Deviations from these Conditions and/or any offer or contract are possible only if put in writing by the persons authorised to make such deviations and will apply only to the specific contract to which they pertain. In deviation from the provisions of Article 6:225(2) of the Dutch Civil Code, Kingspan will not be bound by any deviations from Kingspan's offer made in the acceptance by the buyer.

ARTICLE 3. OFFERS AND CONTRACTS

- 3.1 Offers made by Kingspan are to be considered one whole, are valid up to 30 days after the date of the offer, or as much longer or shorter as stated in the offer, and are always entirely non-binding. Kingspan may revoke offers within five working days after receipt of the Customer's acceptance of an offer made by Kingspan.
- 3.2 All information and data included in offers, letters, catalogues, drawings, etc., provided by Kingspan, such as dimensions, colours, patterns, weights, powers, amounts and pure thicknesses, are as accurate as possible and are binding only if such is expressly stated. However, Kingspan cannot guarantee that there will be no deviations in this respect.
- 3.3 Offers are based on the information provided by the Customer. The Customer is responsible for any additional costs, increases in price, delays in completion or delivery, and any other consequences of changes, deviations and/or errors in that information.
- 3.4 A contract will be concluded between Kingspan and the Customer upon the dispatch of a written order confirmation by Kingspan to the Customer or – if this is sooner – upon the commencement of the performance of the contract by Kingspan for the Customer. If Kingspan dispatches an order confirmation, the order confirmation is considered to accurately and completely present the contents of the contract.

ARTICLE 4. SCOPE OF THE WORK

- 4.1 The contract relates to the performance of the work and/or the delivery of the products as described in the order confirmation or, in the absence thereof, in the offer (possibly amended in accordance with Article 2.4 above). Where applicable, the contract is carried out on the basis of working drawings approved by the Customer, including dimensions. The delivery of as-built drawings is not part of the contract, unless agreed otherwise in writing.
- 4.2 If explicitly stated in the contract, the contract also relates to the teachings or instructions regarding the operation of any installations delivered by Kingspan to the Customer, to be provided by Kingspan to the Customer or to the Customer's employee(s) who will be charged with the operation. Kingspan determines the extent and duration of the teachings or instructions provided.
- 4.3 The Customer is responsible for and will arrange for:
 - a. roofing work and/or other structural work;
 - b. assistance in moving, removing or installing things that cannot reasonably be handled by two persons;
 - c. horizontal and vertical transport of men and equipment to the location to be designated by Kingspan;
 - d. the provision, set up and – after completion of the work – removal of scaffolding and ladders;
 - e. the energy, water and gas supply required to carry out the work and the timely application, acquisition and maintenance of the necessary permits;
 - f. the provision of waste containers;
 - g. the provision of safety precautions, such as roof edge protection, safety nets or fall protection on scaffolding and the like, if prescribed in any relevant laws and/or regulations, or if deemed necessary by Kingspan;
 - h. the provision of a dry, heated, well-lit and separately lockable space of sufficient size with electricity and internet connections to accommodate Kingspan's employees during the work to be carried out and to store materials and products supplied by Kingspan, all to the satisfaction of Kingspan;
 - i. a proper insurance policy regarding the things stated at h. above;
 - j. the decisions that fall under its responsibilities in the context of the progress in the performance of the contract, taken at

- such a time that those decisions safeguard the unhindered progress in the performance of the contract;
- k. the timely, complete and accurate provision to Kingspan of all information that is relevant to or may affect Kingspan's performance of the contract. The Customer guarantees the accuracy and completeness of the information and specifications provided by or on behalf of it in this context.
- 4.4 If despite the precautions mentioned in paragraph 3, Kingspan is nevertheless held liable for a violation of the rules, the Customer is obliged to indemnify Kingspan against the costs arising therefrom, expressly including costs arising from any sanctions and/or instructions by, for example, the Labour Inspectorate.
 - 4.5 For the benefit of Kingspan's performance of assembly work, the Customer will arrange for:
 - the timely completion of the watertight connection to the form-retaining and flat upstands;
 - the presence of walkways or similar facilities on the roofing and
 - the timely, accurate delivery and installation in accordance with the specifications or drawings and all statutory and structural requirements of fasteners such as anchor rails, internally threaded bushes and mounts, as well as principles and other provisions necessary for the assembly.
 - 4.6 Assembly work will be performed on the basis of drawings approved by the Customer. The Customer will bear the risk associated with changes made by it after approval.
 - 4.7 The Customer will ensure that Kingspan can carry out the work to be performed by it unhindered at the agreed times or at the times desired and/or indicated by it. This also means that the access roads to the construction site or the location where the goods are to be delivered must be suitable for Kingspan's means of transport and that the designated construction site is suitable for assembly. The Customer will ensure that no work will be performed, either or not by third parties, at locations where, in the context of the contract, work will be performed by Kingspan or third parties engaged by Kingspan at the times when Kingspan carries out or has others carry out the work in question.
 - 4.8 In general, the Customer will provide full cooperation to enable Kingspan to perform the contract in accordance with the conditions set in the contract and/or these Conditions. If the Customer does not comply with the provisions of these Conditions or those of the contract, or otherwise refuses to cooperate in this context, Kingspan will be entitled to charge the Customer separately for any additional costs incurred by Kingspan as a result.
 - 4.9 In general, the Customer is responsible for the accuracy of information and data provided by it, as referred to, among other things, but not exclusively, in this article. The Customer is expected to check the information provided by it for accuracy in advance and immediately inform Kingspan of any ambiguities it discovers or should reasonably have discovered. The Customer is also deemed to be an expert in the field on which it provides information to Kingspan as referred to, among other things, but not exclusively, in this article.
 - 4.10 If the Customer fails to perform its obligations as described in the previous paragraphs and the performance of the work is delayed as a result, that work will be performed if and as soon as Kingspan's planning allows it. In addition, the Customer will be responsible for any losses and costs incurred by Kingspan as a result.

ARTICLE 5. CONTRACT EXTRAS AND CONTRACT REDUCTIONS

- 5.1 The Customer may request changes to the agreed work before or during the performance of that work by Kingspan. Only changes accepted by Kingspan in writing will qualify for implementation. The Customer is deemed to be aware of the price increases that changes to the work may entail.
- 5.2 Kingspan is entitled to charge the Customer for contract extras and changes to the agreed work regardless of whether these were expected. Contract extras and changes to the agreed work are understood to mean everything delivered and/or installed and/or performed by Kingspan at the request of, with the permission or for the benefit of the Customer in the context of the contract that exceeds the provisional sums, quantities (estimated or deductible) and/or work explicitly laid down therein, or that Kingspan was reasonably required to deliver, install or perform on the basis of the contract.
- 5.3 In the event of changes to the agreed work and contract extras and/or requests for such changes and contract extras as referred to in the previous paragraphs of this article, Kingspan will be entitled to an extension of the agreed deadlines and delivery periods and/or schedules and to charge the Customer a price increase for it. The Customer is deemed to be aware of the price increase that the contract extras entail.
- 5.4 Kingspan will inform the Customer of contract extras performed by it as soon as possible. The costs arising from the contract extras or contract reductions referred to in the previous paragraphs of this article will be charged to the Customer or settled with the Customer as soon as they are known to Kingspan, immediately after completion of the contract extras or contract reductions in question. In the event that the Customer fails to consent to the amounts stated by Kingspan as referred to in this article within 7 days after they are stated, Kingspan will be entitled to suspend the work without notice until that consent is given or until agreement is reached regarding those amounts.
- 5.5 If it turns out during the settlement of the work that the total of the contract extras and contract reductions results in a reduction of the contract price, Kingspan will be entitled to payment of an amount equal to 30% of this reduction, excluding VAT.

ARTICLE 6. DELIVERY

- 6.1 The delivery period stated by Kingspan is purely for information purposes and is never considered a strict deadline. Moreover, it

- is based on the written information known to Kingspan, the circumstances applicable to Kingspan and, in so far as Kingspan is dependent on the performance of third parties, the information provided by those third parties to Kingspan at the time when the Customer entered into the contract. In the event that Kingspan exceeds the stated delivery period, Kingspan will only enter default on receipt of a written notice of default from the Customer in which Kingspan is given a reasonable period to comply with its obligations.
- 6.2 The delivery period commences after the contract is concluded, all the information (including the VAT/tax number of the Customer) and/or materials necessary for the performance of the work have been provided to Kingspan, all the permits and other formalities needed for this performance have been acquired or met by the Customer and/or Kingspan has been notified of this in writing, the Customer has approved the drawings and dimensions, and Kingspan has received payment in so far as payment must be made upon conclusion of the contract. The ownership of things delivered /to be delivered by Kingspan and/or the work performed /to be performed by Kingspan will not pass until the Customer has paid all that it owes Kingspan.
 - 6.3 The delivery period will be extended by any period during which Kingspan has suspended the performance of its obligations under the contract pursuant to these Conditions and/or the law, or by any period during which Kingspan has been prevented from performing those obligations due to force majeure as described in Article 15 of these Conditions. Moreover, this period will be extended by any period during which Kingspan is dependent on deliveries or performances by third-party suppliers of Kingspan.
 - 6.4 In the event of purchase, the risk will pass to the purchaser/Customer once those products are in the means of transport by which they will be delivered to the purchaser/Customer, regardless of who is responsible for the transport ('Ex Works' (EXW (Uden – Incoterms 2010))). In the event that Kingspan contracts work, regardless of the validity of the provision of paragraph 2 of this article, the client/Customer will bear the risk for the materials equipment and products present at the location of the work as from the moment these are supplied at the work location.
 - 6.5 Kingspan is entitled to deliver in parts. Furthermore, Kingspan is entitled to invoice in parts regarding partial deliveries.
 - 6.6 The Customer is obliged to provide any cooperation necessary for the performance of the contract. This cooperation will be deemed to have been refused:
 - if, in the event that the Customer must arrange transport, the products/materials in question are not collected by or on behalf of the Customer on the agreed date;
 - if, in the event that Kingspan arranges transport, the products/materials have been offered to the Customer for delivery, but delivery proved impossible or was refused by the Customer;
 - if the Customer refuses to give Kingspan access to the work and/or otherwise prevents or hinders Kingspan's performance of the contract.
 - 6.7 In the cases referred to in paragraph 6 of this article, the Customer will immediately enter default without further notice being required. The day on which the refusal takes place will be considered the delivery date of the products/materials in question. In that case, all that Kingspan has to claim from the Customer pursuant to the relevant contract will be immediately due and payable in full. The Customer is responsible for any additional costs and other losses incurred by Kingspan in this context. In the event that the Customer refuses acceptance of products/materials, Kingspan will be entitled to store those products/materials at the risk and expense of the Customer or sell those products/materials to one or more third parties or otherwise dispose of those products/materials. The costs and any losses involved will be at the expense of the Customer.

ARTICLE 7. DELIVERY ON DEMAND

- 7.1 In case of delivery on demand, delivery of the relevant products/materials by Kingspan must take place within 30 days after the day on which the products/materials are ordered. If call-off periods have been agreed, the aforementioned period will be extended by 10 working days in the event of a late order.
- 7.2 The Customer is obliged to order, failing which Kingspan will be entitled to store the products/materials at the risk and expense of the Customer or to sell those products/materials at the expense and risk of the Customer, without prejudice to Kingspan's other rights in this respect. If the products/materials are stored in accordance with the previous sentence, they are deemed to have been delivered. The Customer is responsible for any additional costs and other losses incurred by Kingspan in relation to this.
- 7.3 In the event of delivery on call-off, the transfer of ownership will also take place under the condition precedent of payment by the Customer.

ARTICLE 8. COMPLETION

- 8.1 The work performed by Kingspan is completed once the work has been made available to the Customer/client. Kingspan will immediately notify the Customer of this availability. The Customer must inspect the work within two weeks after Kingspan's notification that the work is available to the Customer. Kingspan will determine the date and time of the inspection of the work.
- 8.2 If the Customer finds defects in the work, it must give Kingspan a reasonable period within which Kingspan can repair the defects found. Small defects that do not prevent the Customer from putting the work into use are not a valid reason not to proceed with the inspection and/or completion of the work.
- 8.3 If the Customer does not inspect the work within two weeks after Kingspan's notification as referred to in paragraph 1 of this article, the work will be deemed to have been completed and Kingspan will no longer be responsible for shortcomings in the work, except

- in the case where the work or any part thereof contains a hidden defect as a result of an attributable failure by Kingspan or its employees and Kingspan is notified of this hidden defect in writing as soon as possible after its discovery. The Customer must provide proof of the aforementioned failure and its attributability. A defect is hidden if the defect could not have reasonably been recognised by the Customer despite close supervision during the performance or the inspection of the work.
- 8.4 Kingspan is not responsible for defects that the Customer should reasonably have discovered during or before completion despite close supervision and the Customer is obliged to inform Kingspan of any defects within a reasonable period after their discovery or within which the Customer should reasonably have discovered them, but in any event within one calendar month, subject to forfeiture of all its rights arising from those defects.
- 8.5 Any right of action in respect of a defect, hidden or otherwise, will lapse on expiry of two years after the Customer has protested in the matter, or at least on expiry of four years after completion, unless a mandatory statutory provision provides otherwise.
- 8.6 The Customer may demand a discount from Kingspan on the contract price due to late delivery of the work. § 42.2 of the Uniform Administrative Conditions for the Execution of Works applies mutatis mutandis without prejudice to the provisions of Article 16 of these Conditions.

ARTICLE 9. PACKAGING

- 9.1 The packaging deemed necessary by Kingspan, including metal frames, glass carts and the like, will always remain the property of Kingspan.
- 9.2 Kingspan is entitled to charge the Customer costs or deposits for packaging, without prejudice to its right to compensation for damage caused to the packaging or for the costs of loss of the packaging.

ARTICLE 10. PRICES

- 10.1 All prices used by Kingspan are exclusive of packaging, shipping, transport, travel and accommodation expenses as well as costs relating to the crossing of borders, loading and unloading of materials, VAT, assembly, testing and putting into use. In the event of delivery within the Netherlands, the Customer will not be charged any shipping costs on invoice amounts exceeding EUR 1,500, excluding VAT. If the Customer itself arranges for transport, Kingspan will not give any discount on the invoice amount or any other reimbursement as a result. In case of invoice amounts below EUR 500, excluding VAT, an administration fee of EUR 50 will be charged.
- 10.2 The prices quoted by Kingspan are based on the price-determining factors applicable at the time of the offer to the Customer, including the wages calculated according to the working hours considered normal at Kingspan. Kingspan is entitled to increase the agreed prices and immediately charge these to the Customer on the basis of a subsequent increase in the aforementioned price-determining factors, even if this increase was foreseeable.
- 10.3 The price increase referred to in paragraph 2 will be calculated on the basis of the increase of the most recent price index figure for 'product prices 28120000 metal construction works for the construction industry' as determined by Statistics Netherlands (CBS).

ARTICLE 11. PAYMENT

- 11.1 The Customer must make payment within 30 days after the invoice date, without discount, suspension or set-off. Payment must be made to Kingspan into an account in the Netherlands to be designated by Kingspan, or in a different manner indicated by Kingspan.
- 11.2 If payment is not made on time, the Customer will immediately be in default and all of Kingspan's claims against the Customer will be immediately due and payable. In that case, Kingspan will be entitled to suspend the performance of the contract without a notice of default being required.
- 11.3 The full claim for payment will also be immediately due and payable if the Customer is declared bankrupt, if a petition for bankruptcy is filed by or against it, if it applies for a suspension of payments, if seizure or attachment is levied on property or claims of the Customer, if the legal entity acting as Customer is dissolved or liquidated, or if the natural person acting as Customer is placed under conservatorship or dies.
- 11.4 Without a notice of default being required, the Customer will owe a default interest of 1.5% per month on the still outstanding amount, including VAT, of any invoice not paid on the due date, unless the statutory interest is higher, in which case the statutory interest will apply. For the purpose of calculating the interest, a part of a month will be considered a whole month. If the extrajudicial costs actually incurred exceed 15% of the unpaid amount, those costs actually incurred will be owed.
- 11.5 If the Customer is in default in respect of Kingspan, it will be obliged to compensate Kingspan in full for the extrajudicial costs incurred in collecting the amounts for which it is in default. The costs involved amount to at least 15% of the unpaid amount including VAT plus the aforementioned interest, with a minimum of EUR 250 plus the VAT owed thereon.
- 11.6 In case of legal proceedings or arbitration in this respect in which the Customer is wholly or partially unsuccessful, the Customer will owe Kingspan the costs of the proceedings and the costs of legal assistance actually incurred, in so far as these costs actually incurred exceed the costs determined by the court or arbitral tribunal.
- 11.7 Kingspan is at all times entitled to set off its claims against the Customer against its debts to the Customer, even if the counterclaim has passed to a third party. For the purposes of this article, 'Customer' also refers to the companies affiliated with the Customer.
- 11.8 Payments made by the Customer will always first serve as payment of interest and costs owed, then as payment of payable claims for which no valid retention of title can be stipulated, and lastly as payment of the oldest outstanding invoices or claims, even if the Customer states that the payment pertains to a dif-

- ferent or newer invoice or claim.
- 11.9 Kingspan is entitled to request that the Customer provides security. The security in question must be such that all that the Customer owes or will owe to Kingspan by whatever virtue is properly covered. If the Customer refuses to provide adequate security to Kingspan's satisfaction, Kingspan will be entitled to suspend its obligations towards the Customer or to dissolve the contract. The related costs or losses must be reimbursed by the Customer.
- 11.10 Objections to invoices must be made known to Kingspan in writing within eight working days after the invoice date, failing which those invoices will be deemed to be correct and complete and their indebtedness will be established.

ARTICLE 12. INSPECTION AND COMPLAINTS

- 12.1 The Customer is obliged to inspect the goods delivered to it by Kingspan immediately upon receipt. If the Customer does not complain within 24 hours after receipt of the goods delivered, the quantities stated on consignment notes, delivery notes, invoices or similar documents will be deemed to be correct.
- 12.2 Any defects in the goods delivered that can be observed immediately upon receipt of the products must be recorded and specified immediately on the consignment note by the Customer with a clear description of the relevant complaint. Other complaints must be submitted by the Customer to Kingspan in writing within two working days after receipt of the products/materials in question, or after any defects could reasonably have been discovered. In the absence of a timely complaint, or if the products/materials delivered have been wholly or partially processed, the products are deemed to have been approved and complaints are no longer possible, unless the defect could only be discovered due to or during the processing, without prejudice to the Customer's obligation to complain on time in that case. If the Customer fails to comply with the methods of complaint prescribed in this article, all its rights in the matter will lapse.
- 12.3 The Customer will provide all cooperation desired by Kingspan in the context of the investigation into the complaint, including by providing relevant sample materials and by giving Kingspan the opportunity to investigate, in so far as deemed relevant by Kingspan, the circumstances at the location of the processing of the products/materials in question.
- 12.4 After the Customer has properly submitted a complaint and Kingspan has accepted the complaint, Kingspan can choose at its own discretion between repairing or redelivering the products/materials in question and dissolving the contract in whole or in part against a refund/settlement of the relevant purchase price or part thereof, without the Customer otherwise being entitled to compensation.
- 12.5 The Customer is not entitled to file a claim if one of the situations within the meaning of article 6(6) of these Conditions arise or as long as the Customer has not met its obligations towards Kingspan.
- 12.6 Colour differences of the materials delivered by Kingspan, if any, must be determined by the Customer before the start of the production. If the Customer does not check the materials for any colour differences before the production, the risk will be for its own account and the right to file a claim for these colour deviations will lapse.

ARTICLE 13. WARRANTY

- 13.1 Kingspan warrants the absence of faults in terms of construction and/or materials during the warranty period agreed for the product in question or the work carried out. Kingspan will repair, improve or replace products and/or the work carried out for which the Customer/Client provides sufficient evidence that these have become defective within the warranty period as a result of such a fault, or credit the Customer/Client for a proportionate part of the invoice, such at Kingspan's discretion. At Kingspan's discretion, repair, improvement or replacement will take place at the premises of the Customer/Client or at a location to be designated by Kingspan. The Customer/Client will ensure the presence of and bear the costs of energy, hoist, lift and transport equipment, scaffolding, window-cleaning installations and the like.
- 13.2 If Kingspan uses materials or services provided by third parties in the execution of its performance, Kingspan's warranty towards the Customer/Client under no circumstances extends beyond the warranty that Kingspan obtains from its supplier or subcontractor.
- 13.3 If the agreed performance consists of contracting work, then during the warranty period specified in paragraph 1 Kingspan warrants the soundness of the delivered construction and the materials used, provided that it was free in the choice thereof. In this context, soundness means that the construction and materials meet the requirements set out in the VMRG-Kwaliteitseisen Adviezen (the quality requirements and recommendations of the Federation of Metal Frame and Facade Producers, hereinafter the 'VMRG Quality Requirements and Recommendations'), including any additions as these read three months prior to the date on which the agreement was concluded, which quality requirements and recommendations can be consulted directly at www.Kingspanatmos.com and a copy of which Kingspan will provide to the Customer/Client upon the latter's first request free of charge.
- 13.4 If the agreed-upon performance consists solely of the delivery of property, Kingspan warrants the soundness – within the meaning of the meaning of paragraph 3 – of the property delivered during the warranty period specified in paragraph 1. If it turns out that the delivery was not sound, then the property must be returned to Kingspan carriage paid. Kingspan will then choose whether to repair or replace the property or to credit the Customer/Client for a proportionate part of the invoice.
- 13.5 If the agreed-upon performance consists solely or partly of the provision of a service, Kingspan will provide this service on the basis of a best efforts obligation. Kingspan will make every effort to carry out the service with due care.
- 13.6 If the agreed-upon performance is related to the delivery of an ICT service or hardware components, Kingspan does not warrant

- the flawless and uninterrupted functioning of the service, the software or the hardware components.
- 13.7 The costs of replacement or repair will be borne by Kingspan up to a maximum of that part of the invoice amount (excluding turnover tax) that relates to the manufacturing and assembly costs of the part in question or to the warranty that Kingspan obtains from its supplier or subcontractor.
- 13.8 The Customer/Client will not be able to invoke the warranty until such time as the Customer/Client has fulfilled all its obligations towards Kingspan under the agreement in respect of which the warranty applies. Suspension of the commencement date of the warranty due to the latter does not change the end date of the warranty.
- 13.9 Redelivery, replacement or repair under the warranty does not extend or renew the term of that warranty.
- 13.10 Unless otherwise agreed, the warranty does not cover:
- the travel, accommodation and transport costs incurred by Kingspan within the framework of the relevant warranty;
 - the costs incurred by Kingspan for assembly/disassembly, unless the assembly/disassembly takes place within the first year of the warranty;
 - all other costs incurred by Kingspan in relation to the work carried out by Kingspan which exceed the mere obligation to repair, improve or replace as referred to in paragraph 1 of this article, such as, but not limited to, the costs of scaffolding and any safety and other facilities necessary for assembly/disassembly and the costs in connection with the application/re-application for permits or exemptions to be granted in this context.
- 13.11 The Customer/Client will not be entitled to invoke the warranty if:
- a) Kingspan has indicated that it does not agree with the choice of materials and/or working method prescribed by the Customer/Client in respect of which the warranty is invoked;
 - b) the Customer/Client or third parties have carried out work on the product or the works created or installation, assembly and/or repair has taken place and/or additions have been made, irrespective of whether these have led to changes to the product or the works created;
 - c) that warranty is invoked in respect of defects that are the result of form changes in constructions built by the Customer/Client or third parties, of construction, repair, cleaning or other activities not properly carried out by the Customer/Client or third parties or of the use by the Customer/Client or third parties of materials unsuitable for their purpose;
 - d) defects of or to the products are the result of weathering or unforeseen, temporary or permanent harmful influence(s) of the environment and/or normal wear and tear or injudicious or abnormal or careless use, or external influences, which have arisen during or after delivery/completion;
 - e) defects caused by blinds, window-cleaning installations, ladders and the like;
 - f) defects are the result of glass breakage, due to thermal stress or other causes, or the application of wired glass/plate-wired glass;
 - g) defects are the result of thermal loads exceeding 70°C;
 - h) defects are the result of sealing, except as regards watertightness;
 - i) defects are caused by gaskets (E.P.D.M.), except as regards flexibility;
 - j) the warranty is invoked in response to filiform corrosion;
 - k) the warranty is invoked in response to colour differences and/or loss of gloss in accordance with the relevant provisions of the aforementioned VMRG Quality Requirements and Recommendations as applicable three months prior to the conclusion of the agreement;
 - l) there has been insufficient or no maintenance or cleaning in accordance with the relevant provisions of the aforementioned VMRG Quality Requirements and Recommendations as applicable three months prior to the conclusion of the agreement;
 - m) the invocation of the warranty concerns minor imperfections in terms of finishing which do not affect its soundness;
 - n) the product is not used in accordance with its designated use agreed upon;
 - o) the Customer/Client does not or does not fully comply with any obligation arising from these Conditions or an agreement governed by these Conditions, including financial obligations;
 - p) the defects in question can be traced back to property and/or materials or parts and/or methods and/or constructions that deviate from the regulations, requirements and recommendations referred to in the aforementioned VMRG Quality Requirements and Recommendations, insofar as these have been applied at the express instruction of the Customer/Client or these defects are caused by or are the result of a subcontractor prescribed by the Customer/Client;
 - q) the information/product information in or on the product has been removed or has become illegible;
 - r) the defect in question could have been established at the time of delivery/completion;
 - s) the defect in question has not been reported to Kingspan in writing by the Customer/Client within eight days after the defect was or could have been detected;
 - t) defects are due to other circumstances not for the account and risk of Kingspan.
- 13.12 With regard to third-party materials, equipment, installations, etc., Kingspan is not obliged to provide a longer warranty period or to accept more extensive liability than the manufacturer or supplier concerned is prepared to accept towards Kingspan with regard to these products, without prejudice to the other provisions of this article.

ARTICLE 14. ATTRIBUTABLE FAILURE AND DISSOLUTION

- 14.1 If the Customer does not properly or timely meet any obligation following from any agreement with Kingspan, the Customer is in default without any notice of default and Kingspan is, without prejudice to its right to compensation, expressly including consequential loss, entitled without notice of default or judicial intervention to:

- suspend the performance of the agreement and directly related agreements and/or obligations, until it has been established that Customer has met the obligations.
 - and/or
 - partly or wholly terminate the agreement and the directly related agreements. In the event of termination by Kingspan, the Customer is not entitled to compensation, in whatever form.
- 14.2 In the event of a provisional suspension of payment, bankruptcy, shutdown or dissolution of the company of the Customer or attachment on the Customer's assets, all Kingspan's agreements with the Customer terminate by operation of law, unless Kingspan informs the Customer within a reasonable term to require performance of the relevant agreement(s) or part of them. In the latter event, Kingspan is entitled without notice of default to suspend the performance of the agreement until the Customer's performance has been sufficiently established.
- 14.3 If a situation arises within the meaning of section 14.1 or 14.2, all Kingspan's claims against the Customer are immediately due and payable and Kingspan is entitled to store the commodities, materials, parts and other things reserved, in progress, and/or manufactured for the performance of the agreement for the account and risk of the Customer.
- 14.4 A termination as referred to here, does not alter Kingspan's other rights as laid down in these Conditions.

ARTICLE 15. NON-ATTRIBUTABLE FAILURE (FORCE MAJEURE)

- 15.1 If Kingspan cannot meet its obligations towards the Customer, including warranty obligations, due to non-attributable failure (force majeure), meeting these obligations will be suspended for the period of the force majeure situation.
- 15.2 As soon as the force majeure situations lasts for six months or if it becomes clear that it will last at least six months, both parties are entitled to terminate the agreement in part or in whole in writing, in so far as this is justified by the force majeure situation.
- 15.3 In the event of a force majeure, the Customer is not entitled to any compensation even if Kingspan has any advantage as a consequence of the force majeure.
- 15.4 Force majeure includes, among other things, all unworkable circumstances which partly or entirely hinders the performance of its obligations towards the Customer or because of which its obligations cannot be reasonably expected from Kingspan regardless of whether these circumstances could be foreseen when the agreement was concluded. Unworkable circumstances include, among other things: strikes and exclusion, precipitation, wind and frost or other unworkable weather conditions, business interruption or other problems during production or performance of the work by Kingspan or its suppliers and/or during its own transport or transport by third parties, measures of any government agency and the lack of any permit or certificate to be granted by the government, in so far as these circumstances are the consequence of which that the work cannot be realised or performed in conformity with the VMRG Quality Requirements and Recommendations or other applicable requirements.
- 15.5 Kingspan will inform the Customer as soon as possible about a possible force majeure situation.

ARTICLE 16. LIABILITY AND INDEMNIFICATION

- 16.1 Kingspan is liable for any harm suffered by the Customer/Client that is directly and exclusively the consequence of a shortcoming attributable to Kingspan. Kingspan is not liable for any consequential or indirect damage, including but not limited to loss of profit. However, only damage for which Kingspan has taken out insurance, or for which Kingspan reasonably should have taken out insurance, is eligible for compensation. If and insofar as no payment is made on the basis of an insurance policy, any cumulative liability on the part of Kingspan is limited to the invoice value of that part of the products delivered and paid for and of the activities performed and paid for that caused the damage to a maximum of EUR 25,000.
- 16.2 Any further liability on the part of Kingspan is excluded. Kingspan expressly accepts no liability for, and the Customer/Client indemnifies Kingspan against, third-party claims in respect of:
- a. damage as a result of inadequacy of materials or parts made available by or on behalf of Customer/Client or a construction prescribed by the Customer/Client and/or a design and/or drawing not originating from Kingspan;
 - b. damage as a result of drifting snow, winds exceeding 14 metre/second or strong atmospheric changes;
 - c. indirect and/or consequential damage, including intangible damage, trading loss, such as business interruption loss and lost profit or environmental damage;
 - d. damage to property in the care, custody or control of, but not owned by the insured, which includes damage caused by or during the execution of the work contracted for to property that is being worked on or property in the vicinity of the place where work is being carried out;
 - e. damage as a result of loss, theft, burning or damage to tools, materials and/or other property of Kingspan, insofar as that damage is not covered by a construction all risk (CAR) insurance, such as in the case of renovation or service/maintenance activities.
- 16.3 The Customer/Client indemnifies Kingspan against all claims by third parties on account of product liability as a result of defect in a product that has been delivered by the Customer/Client to a third party and that consisted in part of products and/or materials delivered by Kingspan.
- 16.4 Conditions limiting or excluding liability that can be invoked against Kingspan in connection with goods or services delivered to it by its suppliers or subcontractors may also be invoked by Kingspan against the Customer/Client and/or the Customer's/Client's relations.
- 16.5 The employees of Kingspan or third parties engaged by Kingspan for the performance of the agreement can invoke all defences to be derived from the agreement against the Customer/Client and/or the Customer's/Client's relations as if they themselves were party to the agreement.

- 16.6 Any claim against Kingspan in this respect, except for claims acknowledged by Kingspan and claims as referred to in Article 8(5) of these Conditions, will lapse twelve months after the claim has arisen, unless otherwise provided by a mandatory statutory provision.
- 16.7 The parties have taken out adequate insurance and will maintain adequate insurance cover for the risks for which the parties may be liable on the basis of the agreement. In the event of contracting work, the Customer/Client is obliged to take out an adequate construction all risk (CAR) insurance, under which Kingspan is co-insured without any exclusion or excess on the part of Kingspan, unless Kingspan can be regarded as the main contractor. Any obligation, regardless of to whom, arising from the applicability of an excess to any insurance in this respect is for the account and risk of the Customer/Client.

ARTICLE 17. RETENTION OF TITLE

- 17.1 Title to the products delivered by Kingspan will, notwithstanding the actual delivery, only pass to the Customer after the latter has paid in full all that which it owes or will owe to Kingspan pursuant to the agreement. Until full payment has been made, the Customer is not entitled to pledge or transfer title to the products to third parties. The latter prohibition is expressly intended to have an effect under property law and renders the Customer without power of disposition with regard to pledging or transferring title. Any judicial or other act in violation of this provision is invalid.
- 17.2 If the Customer fails to comply with its obligations or if there is a well-founded fear that he will fail to do so, Kingspan will be entitled, without prior notice of default, to take back the products delivered or to have them taken back immediately. The Customer is obliged to cooperate fully in this respect, on pain of forfeiting a penalty amounting to 30% of the invoice amounts including VAT in respect of the products concerned.
- 17.3 The Customer is obliged to keep the products referred to in this article sufficiently separate from other products and to insure them adequately, in any case against the risk of theft, damage and destruction. The Customer is not permitted to pledge or transfer title to any claims against its insurer by virtue of any insurances as referred to in this paragraph to third parties. The prohibition of pledging or transferring title as referred to in the second and third sentences of paragraph 1 of this article applies mutatis mutandis. Compensation for damage and loss of the products referred to in this article will replace the products in question. The Customer is also obliged to keep in place the marks and/or signs affixed to the products, or to ensure that they are kept in place.
- 17.4 If Kingspan cannot invoke its retention of title because the goods it has delivered have lost their identity as individual goods by way of confusion, specification or accession, the Customer is obliged to pledge the newly formed goods to Kingspan in this context.
- 17.5 In the event of an attachment, provisional or definitive suspension of payments or bankruptcy, the Customer must immediately inform the bailiff levying the attachment, the administrator or the bankruptcy trustee of Kingspan's rights, including property rights, with regard to the goods it delivered to the Customer, such on pain of an immediately due and payable penalty of EUR 5,000 or an immediately due and payable penalty equal to the original invoice amount with regard to the products to which Kingspan loses title, whichever is higher.

ARTICLE 18. RIGHT OF RETENTION

Kingspan is entitled to suspend the surrender of all goods that it has in its possession of or on behalf of the Customer and to retain these goods, until the Customer has fulfilled all its obligations towards Kingspan that the goods in question bear a direct or sufficient connection to justify the suspension and the refusal to surrender. Kingspan is not liable for damage to the goods in its possession, except in the event of an attributable failure on its part in observing the care that may be expected of it in this context.

ARTICLE 19. INTELLECTUAL PROPERTY

- 19.1 Kingspan grants the Customer a non-exclusive and non-transferable, non-pledgeable and non-sublicensable right of use with regard to the goods made available to it and works created for it within the framework of the agreement concluded between Kingspan and the Customer, including all documents, information, including technical information, working methods, processes, drawings, diagrams, models, calculations, designs and all software in that context. The intellectual property rights to the aforementioned goods made available to the Customer within the framework of the agreement, and works and objects created for it within the framework of the agreement, are vested in, and will continue to be vested in, Kingspan or the third party authorised by Kingspan to make those goods and created works available to the Customer.
- 19.2 Kingspan guarantees that any rights of third parties will not prevent the Customer from using the goods and works in question in accordance with the provisions of its agreement with Kingspan. Unless otherwise agreed, the Customer is not allowed to change, copy or in any way make available to third parties or – to the extent possible – grant access to the goods made available to it and the works created for it as specified in the first paragraph in this article. The right of use in this context is for an indefinite period of time, but can be terminated by Kingspan without notice of default and with immediate effect if the Customer fails to fulfil any obligations under these Conditions or any agreement with Kingspan or otherwise acts unlawfully in that respect.
- 19.4 If the provisions of the second sentence of paragraph 2 are violated, the Customer will owe Kingspan, without judicial intervention being required, an immediately due and payable penalty of EUR 100,000 per violation, which penalty is not eligible for mitigation or offsetting. This penalty may be claimed in addition to full compensation under the law and will not affect Kingspan's other rights in this context.
- 19.5 The Customer must return the data provided to it as referred to in paragraph 1 upon Kingspan's first request and within the period

set by Kingspan. If this provision is violated, the Customer will owe Kingspan, without judicial intervention being required, an immediately due and payable penalty of EUR 1,000 for each day, whereby part of a day will be considered a full day, that the violation takes place or persists, which penalty is not eligible for mitigation or offsetting. This penalty may be claimed in addition to full compensation under the law and will not affect Kingspan's other rights in this context.

19.6 The Customer indemnifies Kingspan against third-party claims for damages based on violation of intellectual property rights of those third parties through the use of drawings, data, materials or parts provided, or caused by the application of the method prescribed, to Kingspan by or on behalf of the Customer for the performance of the agreement.

ARTICLE 20. CONFIDENTIALITY

- 20.1 The Customer guarantees that it will observe confidentiality towards third parties with regard to all data, working methods and other matters classified as confidential by Kingspan and those data, working methods and other matters the confidentiality of which is not explicitly indicated, but which the Customer should reasonably understand to be confidential and which its personnel or third parties engaged by it become aware of in the formation and/or performance of any agreement with Kingspan.
- 20.2 If the provisions of paragraph 1 are violated, the Customer will owe Kingspan, without judicial intervention being required, an immediately due and payable penalty of EUR 100,000 for each violation, which penalty is not eligible for mitigation or offsetting. This penalty may be claimed in addition to full compensation under the law and will not affect Kingspan's other rights in this context.
- 20.3 The Customer is in any case obliged to observe confidentiality as referred to in paragraph 1 with regard to the goods and works referred to in Article 19(1) of these Conditions.

ARTICLE 21. STRICT LIABILITY OF CUSTOMER

- 21.1 If Kingspan finds that information and goods it has made available to the Customer and/or works created for it are made available to a third party or used by a third party without Kingspan's prior written consent, regardless of the manner in which this use takes place, the Customer will be deemed to have violated the provisions of Article 19 and/or Article 20 of these Conditions, unless the Customer, in Kingspan's opinion, provides sufficient evidence to the contrary.
- 21.2 The Customer is obliged to impose the obligations under Articles 19 and 20 of these Conditions to its client or third parties engaged by its client in the same way as Kingspan imposed these on the Customer, failing which the Customer will forfeit to Kingspan an immediately due and payable of EUR 100,000 for each violation, which penalty is not eligible for mitigation or offsetting, and without prejudice to Kingspan's right to claim full damages and the other rights to which Kingspan is entitled in this context.

ARTICLE 22. TRANSFER OF RIGHTS AND OBLIGATIONS

Kingspan is permitted to transfer rights and obligations described in any agreement with the Customer to third parties. The Customer is not entitled to transfer its rights and/or obligations under any agreement with Kingspan to third parties without Kingspan's prior written consent.

ARTICLE 23. APPLICABLE LAW AND DISPUTES

- 23.1 All offers, agreements and communications and all of Kingspan's obligations arising therefrom are governed by Dutch law. The applicability of the U.N. Convention on Contracts for the International Sale of Goods (Bulletin of Treaties 1981, 184) and any other international regulations the exclusion of which is permitted are expressly excluded.
- 23.2 There is a dispute between Kingspan and the Customer if one of the parties indicates this in writing, with a brief statement of what, in the opinion of that party, is the subject of the dispute. The parties are obliged to make every effort to resolve the dispute through negotiations for a month after the dispute having been made known as such. Any dispute between the parties remaining after that period with regard to any offer or agreement and any related acts and/or agreements arising from it will be submitted exclusively to the competent courts in Rotterdam, unless Kingspan prefers to resolve the dispute through arbitration. In the latter case, Kingspan will indicate without delay to which arbitral tribunal the case will be submitted and according to which arbitration regulations or which rules of procedure the arbitration will be conducted.

ARTICLE 24. OTHER CONDITIONS

- 24.1 Nullity of any provision of these Conditions does not affect the validity of the remaining provisions. Null and void provisions will be replaced by new provisions that approximate the null and void provisions as closely as possible in terms of content, scope and purport.
- 24.2 If Kingspan enters into an agreement with two or more natural or legal persons together, each of them will be jointly and severally liable for the full performance of the obligations arising for the parties under that agreement.
- 24.3 The failure by Kingspan to, in any agreement to which it is a party, demand compliance with any provisions of the agreement within a specified term, does not affect the right to still demand compliance, unless Kingspan expressly agreed to the non-compliance in writing.