

## **General Terms and Conditions**

### **Article 1 Application**

1.1. These general terms and conditions (the "**General Terms and Conditions**") shall apply to any and all legal acts and/or legal relationships between DoubleCOOL and a customer or potential customer (the "**Customer**"), including but not limited to: (i) every tender, price quotation and/or every other type of written invitation to make an offer addressed to the Customer (hereinafter an "**Offer**"), and (ii) every agreement for sale and purchase, for acceptance of work, for the carrying out of services or activities, contract for services as well as any other agreement and all agreements and/or obligations flowing from or connected therewith, made between DoubleCOOL and the Customer (hereinafter an "**Agreement**"). These General Terms and Conditions are available on DoubleCOOL's website [www.DoubleCOOL.eu](http://www.DoubleCOOL.eu) and, at the request of the Customer, will be sent to the Customer at DoubleCOOL's expense.

In the context of these General Terms and Conditions "**Customer**" also means: any legal or other entity affiliated with the Customer, who directly or indirectly controls and/or manages the Customer's business, or who is controlled and/or managed by or under the same controlling agency as the Customer.

1.2. No general terms and conditions apart from the present General Terms and Conditions shall apply to Offers and Agreements, unless DoubleCOOL expressly accepts the application of other terms and conditions in writing. The applicability of the Customer's general terms and conditions or those of any other third party are hereby expressly excluded by DoubleCOOL.

1.3. These General Terms and Conditions may only be deviated from by means of a written declaration or agreement.

1.4. DoubleCOOL reserves the right to amend these General Terms and Conditions. The General Terms and Conditions as amended shall apply at the time when they are published on the DoubleCOOL website. The Customer hereby undertakes to consult the DoubleCOOL website regularly in order to establish whether DoubleCOOL has published a new version of these General Terms and Conditions.

### **Article 2 Offers and the creation of agreements**

2.1. All Offers are issued without obligation on either side, are revocable and free of engagement and shall be deemed to be an invitation to make an offer.

2.2. An Agreement between DoubleCOOL and the Customer shall come into effect at the time when DoubleCOOL receives a (complete or partial) offer or order from the Customer, and DoubleCOOL accept this by means of a written confirmation of order. In the context of this Article 2.2. written confirmation may also take place by electronic means. An Agreement shall also come into effect by means of implementation by DoubleCOOL of an offer or order submitted to DoubleCOOL by the Customer.

2.3. Agreements shall be deemed to have been made in the registered seat of DoubleCOOL, being Rotterdam, in the Netherlands.

2.4. The Customer shall be required to make an advance payment or down payment at the first request of DoubleCOOL, who shall be entitled at all times to make such a request, or to provide security for the proper fulfilment of the Customer's obligations as requested by DoubleCOOL, in a manner to be determined by DoubleCOOL.

2.5. DoubleCOOL reserves the right to, at all times, engage third parties in the execution of the Agreement or with regard to any related activities.

### **Article 3 Samples and Custom Products**

3.1. Samples, prototypes, specimens, models and/or test preparations designed and/or manufactured by DoubleCOOL at the request of the Customer (hereinafter referred to as "**Samples**") shall not form part of the Agreement, unless otherwise agreed expressly and in writing by DoubleCOOL and the Customer.

3.2. The Customer must examine Samples within fourteen (14) days of receipt. Where DoubleCOOL has received no (rejection) message in relation to the Samples within fourteen (14) days, then the Samples shall be deemed to have been approved and DoubleCOOL shall be entitled to assume that the Sample is suitable and may be used by DoubleCOOL in implementing the Agreement.

3.3. The costs and the risk of producing Samples, designed, manufactured and/or produced by DoubleCOOL on the basis of specifications, instructions, requirements and/or dimensions provided by the Customer, shall be borne by the Customer, unless the Customer enters into an Agreement based on the sample in question for the purchase of custom Products in accordance with the Sample ("**Custom Products**").

3.4. DoubleCOOL reserves the right to produce Custom Products for third parties as well and to sell these to third parties, unless DoubleCOOL and the Customer have expressly agreed otherwise in writing.

3.5. Taking into account Article 12 of these General Terms and Conditions, the Samples and any drawings, knowhow and designs prepared by DoubleCOOL shall remain the property of DoubleCOOL and may by or on behalf of the Customer or by any third parties engaged by the Customer not be (i) copied, (ii) provided for the inspection of any third party and/or (iii) otherwise disclosed to third parties, without the prior written authorisation of DoubleCOOL. The samples, drawings, knowhow and designs must be returned to DoubleCOOL immediately after use, or within 10 days upon first request of DoubleCOOL, unless otherwise agreed in writing by DoubleCOOL and the Customer. In the event of a breach of Article 3.5 the Customer shall be liable to pay DoubleCOOL immediately on demand a penalty of €10,000 (in words ten thousand euros) for each breach and €1,000 (in words one thousand euros) for every day that the breach continues, without any requirement for written notice of default or notification, notwithstanding the right of DoubleCOOL to claim any incurred damages and damages to be incurred damages from Customer and/or third parties.

3.6. DoubleCOOL shall be entitled to destroy Samples, dies, moulds and specimens at all times. Furthermore, upon the first request of DoubleCOOL the Customer shall destroy all Samples, dies, moulds and specimens as soon as possible. Following destruction of the aforementioned, the Customer shall issue a written warranty to DoubleCOOL that the Customer has completely fulfilled such request.

#### **Article 4 Prices**

4.1. All prices are based on delivery Ex Works (as defined in Incoterms 2010) and exclude transport costs, costs of insurance, VAT, import and export duties and any other taxes or levies, unless expressly otherwise agreed by DoubleCOOL and the Customer.

4.2. In the event of changes in cost price factors after the conclusion of the Agreement, including but not limited to costs of materials, costs related to government measures, transport costs, the costs of foreign exchange transactions and taxation, DoubleCOOL shall be entitled to apply a corresponding price increase. DoubleCOOL will inform the Customer of the price increase in writing. Where the Customer has not informed DoubleCOOL of his wish to terminate the Agreement as a result of the price increase within fourteen (14) days of despatch of the notification, then the Customer shall be deemed to have accepted the price increase.

#### **Article 5 Delivery**

5.1. Delivery shall be Ex Works as defined in Incoterms 2010. Delivery Ex Works entails that DoubleCOOL will deliver the products by making these available to the Customer at their site at Thurledeweg 5 (3044 EN) in Rotterdam, the Netherlands (the "**Delivery**"), unless another method or place of delivery has been agreed. Delivery will be confirmed to the Customer in writing, electronically or verbally. Risk in the delivered products shall be borne by the Customer at all times following delivery. Where the products delivered by DoubleCOOL cannot be collected by the Customer or cannot be collected in good time, and/or cannot be transported to the destination address because of circumstances not attributable to DoubleCOOL, then DoubleCOOL will store the products at the expense and risk of the Customer.

5.2. Except where DoubleCOOL has explicitly guaranteed a specific delivery deadline in writing, the stated delivery dates shall be indicative of the anticipated delivery deadline. The anticipated delivery deadline is based on the (working)conditions applicable at the time the Agreement is entered into, and on timely delivery to DoubleCOOL by third parties of products or components or materials forming part of products. In the event that the Delivery is delayed as a consequence of a change in the aforementioned (working)conditions or because of late delivery of products, raw materials or product components ordered in good time, or as a consequence of some other circumstance not attributable to DoubleCOOL, then DoubleCOOL shall be entitled to extend the delivery deadline by a reasonable period. Where following that period the Delivery has still not taken place, the Customer must place DoubleCOOL in default, in writing, allowing them a reasonable period to meet their delivery obligations: (i) without DoubleCOOL becoming liable for any compensation for damages, or (ii) without the Customer and/or any third party being entitled to terminate the Agreement, or (iii) without the Customer and/or third parties being entitled to suspend one or more of their obligations towards DoubleCOOL.

5.3. The period for Delivery shall commence at the day and time when the Customer receives the confirmation of order from DoubleCOOL, unless (i) it is necessary for the implementation of the Agreement that DoubleCOOL have data and/or information to be provided by the Customer, in which case the period for Delivery shall commence at the day and time when DoubleCOOL have received all the required data and/or information, or (ii) there is an agreed upon advance payment, in which case the period for Delivery shall commence at the date and time DoubleCOOL has received such advance payment.

## **Article 6 Payment**

6.1. Payments must be made on the agreed date, in the currency specified by DoubleCOOL and to the bank or giro account specified by DoubleCOOL on their invoice. Where no date for payment has been agreed and no date is specified on the invoice, then payment must be made within fifteen (15) calendar days of invoice date.

6.2. In the event that the Customer fails to meet his payment obligations or fails to meet these in good time, then without any requirement for written notification, DoubleCOOL shall be entitled to charge interest at the statutory commercial rate as specified in Article 6:119a of the Dutch Civil Code, increased by one and a half percent (1.5%) per month on the outstanding amounts, commencing at the time the amount in question becomes payable.

6.3. In the event that the Customer fails to meet his payment obligations or fails to meet these in good time, DoubleCOOL shall be entitled to suspend any (further) deliveries, unless payment in full is adequately guaranteed by or on behalf of the Customer.

6.4. All costs flowing from shortcomings by the Customer in meeting his payment and other obligations towards DoubleCOOL shall be borne by the Customer. These costs shall include both judicial and extrajudicial costs, including but not limited to the costs of legal and other advisors.

6.5. Payments to DoubleCOOL shall first be deemed to have been made in order to make good any costs incurred, and then in order to make good any interest incurred, and subsequently to pay any payable invoices in the sequence determined by DoubleCOOL, even where the Customer indicates that his payment is intended to pay other invoices and/or liabilities.

6.6. Any objections in relation to DoubleCOOL invoices or claims must be submitted before the due payment date of the invoice, in default of which the invoice or claim shall be deemed to be accurate and to be accepted by the Customer.

6.7. DoubleCOOL reserves the right to offset (in Dutch: '*verrekenen*') any outstanding claims with all debt DoubleCOOL potentially has or shall have to Customer. DoubleCOOL shall also reserve this right in the event that the claim, on which the debt of Customer to DoubleCOOL is based is not due and payable, is conditional or is dominated in a currency other than the currency of the claim against which it is being offset. Claims in different currencies are offset against each other using the exchange rate of the day of the setoff. DoubleCOOL shall notify Customer in advance, or if this is not possible as soon as possible thereafter, when it will use or has used the right as described in this Article 6.7.

## **Article 7 Export controls**

7.1. The Customer may only export, re-export, sell, transfer, hand over or in any other way provide delivered products to third parties which, taking into account Article 8 of these General Terms and Conditions, are the property of DoubleCOOL on condition that the customer complies with all nationally and internationally applicable acts and regulations relating to export or re-export. The Customer is responsible for the fulfilment of and for compliance with all requirements relating to the required permits relating to the export or re-export of the products. Furthermore, the Customer is responsible for acquiring all necessary export or re-export permits and other official permissions, and shall moreover satisfy all customs formalities relating to the export or re-export of the relevant products.

7.2. Before DoubleCOOL products are transferred to third parties, the Customer must satisfy himself that:

- (i) this transfer is not in conflict with an embargo imposed by the European Union, the United States of America and/or the United Nations;
- (ii) the products to be transferred are not intended for armaments, nuclear technology or nuclear weapons, to the extent that this use is prohibited or is subject to authorisation, unless the required authorisation is granted; and
- (iii) the regulations relating to all applicable lists of parties under sanction by the European Union and the United States of America relating to trade with the listed companies, persons and organisations are observed and applied.

The Customer is to ensure that adequate evidence is available showing that the above has been complied with, and will provide DoubleCOOL with this evidence at their first request.

7.3. In the event that export controls must be implemented, the Customer will without delay and at the request of DoubleCOOL provide all information required with regard to the recipients of the products, the destination and the intended use of the products as well as the applicable export restrictions.

7.4. DoubleCOOL shall not be liable and will indemnify DoubleCOOL against any damages, losses, liabilities, costs and expenditures (including consultancy fees) which arise or may reasonably be expected to arise due to a breach by the Customer, in any way whatsoever, of Article 7 and/or the applicable regulations relating to export controls.

## **Article 8 (Extended) Retention of property**

8.1. All products delivered or to be delivered by DoubleCOOL to the Customer on the basis of an Agreement shall remain the property of DoubleCOOL until such time as the Customer has performed or fulfilled all of his obligations under the Agreement(s), including but not limited to the satisfaction of any claims to interest or costs as well as all claims connected with shortcomings in compliance with an Agreement by the Customer. The reservation set out in the first sentence above shall also apply to claims relating to any activities carried out or to be carried out by virtue of an Agreement.

8.2. In the event that the Customer fails to meet his payment and/or other obligations under an Agreement, DoubleCOOL shall be entitled to recover the products, without any prior notification. The Customer shall be obligated to lend DoubleCOOL his full cooperation at their first request for the return of the products, and to return the products accordingly. The Customer must facilitate the recovery of the products by DoubleCOOL. All the associated costs shall be borne by the Customer.

8.3. In deviation from what is specified in Article 21.1, the stipulations of Articles 8.4 to 8.6 shall be subject to German law.

8.4. The Customer shall only be entitled to process the products supplied by DoubleCOOL in the context of his regular operations, unless (i) the Customer falls short in meeting his payment obligations, or (ii) in the event a situation arises as described in Article 8.9. Where and to the extent that, despite the (possibly extended) retention of property, DoubleCOOL loses its ownership of the products delivered to the Customer by means of accession, specification or confusion or in some other way, then DoubleCOOL and the Customer hereby agree that the Customer shall transfer to DoubleCOOL the property in these goods, of which the delivered products have become part, in proportion to the value of the products supplied by DoubleCOOL. In such cases the Customer shall act as the trustee of the new goods. The joint property of DoubleCOOL and the Customer in relation to the aforementioned products shall also be subject to the (extended) retention of property set out in the present Article.

8.5. The Customer shall be entitled to sell the products delivered by DoubleCOOL, unless (i) the Customer falls short in meeting his payment obligations, or (ii) where a situation arises as described in Article 8.9. The Customer shall hereby transfer to DoubleCOOL all claims he has by virtue of the sale of products, or on another legal ground (including but not limited to exchange or gift) including all claims flowing from current account ratios (to the extent that the value is proportionate to the value of DoubleCOOL's property rights). DoubleCOOL hereby authorises the Customer to demand and to collect all claims, in name of and on behalf of DoubleCOOL, that, as a result of the transfer by the Customer to DoubleCOOL, belong to DoubleCOOL. This authorisation shall lapse in the event that the Customer fails to make good his own obligations towards DoubleCOOL under the Agreement. In the event that the Customer fails to discharge one or more of his payment obligations flowing from the Agreement, then DoubleCOOL shall be entitled (i) to demand the return of the products delivered by them, or (ii) to demand the claims to which the Customer is entitled from third parties (buyers) as a result of sales, in exchange for the property in the products delivered by DoubleCOOL to Customer.

8.6. Until such time as all claims by the Customer against third parties (buyers) have been made good, the Customer shall be obligated to insure the products delivered under retention of property, at his own expense. In the event that DoubleCOOL requests it, the Customer will provide evidence of insurance. Where the total value of the securities provided to DoubleCOOL exceeds the value of the total of all claims which DoubleCOOL have against the Customer by more than 20% (in words: twenty percent), then DoubleCOOL shall be required to release certain securities, at the choice of DoubleCOOL.

8.7. During the period in which the Customer has not met his payment and other obligations under an Agreement, the Customer shall not be entitled to hypothecate the products in whole or in part, or to pledge or alienate them in another way, other than in his normal business operations. At the first request of DoubleCOOL the Customer shall immediately pledge any claim in relation to the products which the Customer may have against any third party now or in the future.

8.8. DoubleCOOL may retain any goods, products, property rights, data, documents, databases, Samples and products manufactured or still to be manufactured by DoubleCOOL, despite any standing obligation to surrender such items, until such time as the Customer has paid all amounts owing to DoubleCOOL.

8.9. The Customer shall inform DoubleCOOL immediately if one or more of the following situations arises:

(i) third parties have or will have valid entitlements to the products, or the Customer becomes aware of that fact;

(ii) the Customer or one of his creditors applies for bankruptcy or (provisional or final) cessation of (iii) payments with regard to the Customer;

a request for a declaration bankruptcy is submitted in relation to the Customer or the Customer is declared bankrupt, or provisional or final cessation of payments is granted to him;

(iv) a significant element of the Customer's assets are or will be seized, or in the case of an account preservation order, this is not lifted or released within thirty (30) days;

(v) a change takes place in the ownership or control of the Customer or when Customer becomes involved in or is subject of a merger, demerger or division or some comparable procedure;

(vi) the Customer becomes involved in negotiations or proposes to enter into negotiations with one or more of his creditors, or proposes to initiate proceedings in relation to a general adjustment to or settlement of his burden of debt;

(vii) the Customer requests application of the Debt Management Natural Persons Act; and/or

(viii) the Customer dies or his business is or will be dissolved, or his business will in whole or in part be relocated, liquidated, discontinued, suspended or moved abroad, or where a decision to this effect is taken.

8.10. All entitlements of DoubleCOOL flowing from the (possibly extended) retention of property set out in this Article 8 shall remain valid up to the time when the Customer has fully met all his (conditional) obligations to DoubleCOOL, including but not limited to the payment of the purchase price.

8.11. Where and to the extent that one or more of the stipulations of this Article 8 are or will be nullified or declared non-binding, or become inapplicable in some other way, then the remaining stipulations of this Article 8 shall continue unabated in force. In that case DoubleCOOL and the Customer hereby undertake to replace the non-binding stipulations with stipulations which are binding and which reflect as closely as possible the objective and scope of the relevant stipulations.

#### **Article 9 Supplementary guarantee or security**

9.1. Where DoubleCOOL has grounds to assume that the Customer is not meeting or will not meet his contractual and other obligations to DoubleCOOL, the Customer shall at the first request of DoubleCOOL be obligated to offer an adequate guarantee or security in the form required by DoubleCOOL.

9.2. Without prejudice to DoubleCOOL's entitlement to suspend the discharge of their obligations under the remaining stipulations of these General Terms and Conditions, the Agreement and/or the law, DoubleCOOL shall be entitled to suspend the discharge of their obligations towards the Customer, without incurring a liability to pay a compensation to the Customer, in any way whatsoever, for so long as the Customer fails to meet his obligations as set out in Article 9.1 of these General Terms and Conditions

9.3. Where the Customer fails to comply with the request of DoubleCOOL as specified in Article 9.1 of these General Terms and Conditions within fourteen (14) days of receipt of the request, all obligations of the Customer towards DoubleCOOL shall immediately be due and become payable in full.

#### **Article 10 Guarantee**

10.1. For a maximal period of eighteen (18) months following delivery, DoubleCOOL shall guarantee the soundness of the products supplied and the materials used in their manufacture (the "**Product Guarantee**"), provided (a) the products are used in a normal and careful manner, (b) in accordance with the Quality Guideline and other instructions of DoubleCOOL, (c) the products are used for their intended purpose and (d) provided that the correct maintenance and application procedure is followed. The Product Guarantee shall not apply where DoubleCOOL have agreed with the Customer that products of a lower quality are to be supplied.

10.2. Immediately upon delivery the Customer shall count, measure and weigh the products, as well as checking these for visible and easily detectable defects, before the Customer moves on to store or use the products. Complaints or claims within the framework of the Product Guarantee, in relation to the delivered products, which were or could have been observed upon Delivery must be submitted in writing to DoubleCOOL within fourteen (14) calendar days following Delivery, in default of which the products delivered shall be deemed to comply with the Agreement and shall be considered accepted by the Customer. Products once taken into use will be deemed to comply with the Agreement, unless it emerges that the product has an invisible defect which could not be easily detected, all such in accordance with the provisions regarding the Product Guarantee.

10.3. Complaints and claims relating to products, not falling under Article 10.2, must be submitted in writing, with a detailed specification of the reasons for the complaint or claim, as speedily as possible and at the latest within fourteen (14) calendar days of the discovery of the defect. DoubleCOOL cannot be liable in any way if this Article 10.3 is not complied with, inclusive but not limited to the liability under the Product Guarantee.

10.4. In the event that DoubleCOOL establishes that a product is defective in the terms of the Product Guarantee and DoubleCOOL has been notified of this in the manner described in Article 10.2 or Article 10.3 of these General Terms and Conditions, then at DoubleCOOL's discretion, the

obligations of DoubleCOOL may be limited to (i) the repair of the product in question, or some part or component thereof, or (ii) the repayment of an element of the original purchase price.

DoubleCOOL hereby explicitly rejects every implicit or explicit guarantee relating to the saleability of a product or its suitability for a specific purpose. DoubleCOOL shall not be liable for any damage, loss, liabilities, costs and/or expenditure on the part of the Customer arising from the non-conformity, the defect or the dysfunctionality of the products.

*10.5.* The Customer shall have no claim against DoubleCOOL under the Product Guarantee in the event that the Customer (i) has processed, repaired, misused, improperly used or adapted the products or some element thereof, (ii) has allowed third parties to use, process, repair, misuse or adapt the delivered goods or some element thereof (iii) has supplied the products or some element thereof to third parties, (iv) has not used the products in accordance with maintenance or application instruction provided with the products, or (v) fails to comply with any other contractual or other obligation towards DoubleCOOL.

*10.6.* Labour and/or travel expenses incurred or still to be incurred for the on-site removal, repair and/or replacement of products or components thereof are not covered by the Product Guarantee and shall be invoiced separately.

*10.7.* The rights of the Customer with regard to the repair or the replacement of defective products in relation to, including but not limited to, the Product Guarantee, shall lapse, if the Customer, in spite of complying with the provisions as set out in Article 10.2 or Article 10.3, does not lodge a claim for performance, for repair or for damages against DoubleCOOL within the guarantee period of 18 months following Delivery.

*10.8.* Products may only be returned to DoubleCOOL with DoubleCOOL's written approval of the return and the method of carriage. In such cases the Customer will bear the risk of the carriage of the products.

## **Article 11 Liability**

*11.1.* This Article 11 applies to all liabilities on the part of DoubleCOOL, regardless of the legal basis of such liability.

*11.2.* DoubleCOOL shall not be responsible for losses, costs or damages suffered or to be suffered in future which are the consequence of late Delivery or Deliveries in stages.

*11.3.* Notwithstanding what is stated in Article 10 of these General Terms and Conditions, DoubleCOOL shall only be liable for any other damages apart from those specified in Article 11.2, where these damages are attributable to intentional damage or gross negligence on the part of DoubleCOOL or on the part of the persons charged with the management of DoubleCOOL's business.

*11.4.* In the event that DoubleCOOL is, notwithstanding the provision as set out in Article 11.3, held liable, DoubleCOOL shall only be liable for financial loss within the meaning of Article 6:96 of the Dutch Civil Code, which is the direct result of the intentional damage or gross negligence on the part of DoubleCOOL or on the part of the persons charged with the management of DoubleCOOL's business.

*11.5.* DoubleCOOL shall in no circumstances be liable for any indirect damages, loss of earnings, loss of contracts, losses, missed savings, incurred costs or other (consequential) damages. DoubleCOOL furthermore shall not be liable for damages where the amount of the damages exceeds the amount paid out to DoubleCOOL (and for which reasonable cover is provided) under their commercial liability insurance. If and to the extent that the incurred damage is not covered by a business liability insurance, but DoubleCOOL is liable on the basis of this Article 11, such liability is in any case limited to financial loss within the meaning of Article 6:96 of the Dutch Civil Code, which is the direct result of the acts or omissions of DoubleCOOL and such liability shall in any event be limited to the purchase price of the products which have caused the damages in question.

*11.6.* DoubleCOOL and its employees and non-employees shall be entitled to rely on any defence, both defences by virtue of contract and those available to DoubleCOOL (and their employees, officers, directors, trading agents and advisors) by virtue of statute, in order to defend themselves against any liability.

*11.7.* The Customer is liable for and shall indemnify DoubleCOOL (and their employees, officers, directors, trading agents and advisors) against any and all claims, demands, legal proceedings, damages, losses, liabilities, costs and/or expenditure (including costs of legal representation, costs of proceedings and/or costs of mediation or arbitration) from third parties flowing from or connected with intentional damage or gross negligence on the part of the Customer, his group of companies and/or his or their employees, trading agents and/or agents. The Customer is liable for and shall indemnify DoubleCOOL (and their employees, officers, directors, trading agents and advisors) against each and all claims, demands, legal proceedings, damages, losses, liabilities, costs and/or expenditure (including costs of legal representation, costs of proceedings and/or costs of mediation or arbitration) suffered by and/or made against DoubleCOOL (and their employees, officers, directors, trading agents and advisors) as a consequence of a breach by the Customer, his group of companies and/or his or their employees, trading agents and/or agents of a contractual or other obligation towards DoubleCOOL, except where such claims, demands, legal proceedings, damages, losses, liabilities, costs and/or expenditure are the consequence of intentional damage or gross negligence on the part of DoubleCOOL.

*11.8.* The mandatory statutory provisions relating to product liability flowing from the law of the Netherlands shall apply unabated, regardless of the requirements of this Article 11.

*11.9.* The Customer hereby undertakes to comply at all times with all applicable international, European and National Acts and Regulations relating to consumer safety, product safety and the recall of products, and to comply with and cooperate fully with the instructions of each and every national authority and/or DoubleCOOL relating to (i) consumer and/or product safety or (ii) the recall of products.

*11.10.* Unless the recall of products is based on applicable acts and regulations, or is recommended by or on behalf of any government agency, DoubleCOOL shall be entitled to determine whether an action relating to the products qualifies as a recall of those products, and DoubleCOOL shall inform the Customer accordingly. At the request of DoubleCOOL the Customer shall indemnify each of their customers inter alia to cease the use of the products with immediate effect, to return the products to

DoubleCOOL or to a third party to be identified by DoubleCOOL, and/or immediately to carry out specified maintenance activities on the products, or to have these carried out. DoubleCOOL and the Customer shall inform one another immediately of each and every potential or threatened recall procedure. The Customer shall be required to establish a suitable and detailed recall strategy, which will enable the Customer to implement and coordinate a satisfactory recall procedure and to monitor compliance with and implementation of this procedure, all with the aim of being able to guarantee the highest possible level of product safety.

## **Article 12 Intellectual property rights**

*12.1.* For the application of these General Terms and Conditions “**Intellectual Property Rights**” means all patents, trademarks, service marks, trade names, registered trademarks, designs, company names, authors rights, database rights, model rights, domain names, moral rights, inventions, confidential information, knowhow and other (existing or future) intellectual property rights and interests, whether or not registered, whether the property of DoubleCOOL or obtained under licence by DoubleCOOL or (one of) the companies in their group, from a third party and related to or embodied in the products or any other materials from or provided by DoubleCOOL. The Customer hereby acknowledges that the Intellectual Property Rights are and shall remain the property of DoubleCOOL, the companies in their group or the relevant third parties from whom DoubleCOOL or the companies in their group have obtained a licence for the use of the Intellectual Property Rights.

*12.2.* The Customer shall refrain from (i) disputing the interests of DoubleCOOL or the relevant third parties in relation to the Intellectual Property Rights or their validity and/or (ii) obtaining any entitlements, claims or interests in relation to the Intellectual Property Rights. The Customer and her group entities shall at all times observe and protect the entirety of DoubleCOOL's Intellectual Property Rights, or of the licence to make use of these. The Customer shall not apply for and/or register any of the Intellectual Property Rights or symbols which relate to or are comparable with the Intellectual Property Rights.

*12.3.* The Customer may not breach the Intellectual Property Rights associated with the production, design, brand name or packaging of any DoubleCOOL product purchased by the Customer, and may not introduce any modifications to the products delivered by DoubleCOOL, unless the nature of the products delivered requires otherwise. The Customer is also prohibited from copying or imitating the products of DoubleCOOL in any way, or producing them in the same or a comparable manner.

*12.4.* DoubleCOOL reserves the right to modify these Intellectual Property Rights at any time they desire, or to replace part or all of the Intellectual Property Rights with other, alternative Intellectual Property Rights.

*12.5.* The Customer may not make use of trademarks, service marks, trading names or trademark registrations from or belonging to DoubleCOOL, without the prior written permission of DoubleCOOL, which permission shall be granted or withheld at the discretion of DoubleCOOL.

*12.6.* DoubleCOOL reserves the right to take any action deemed desirable by DoubleCOOL against the Customer where the Customer and/or any other party breaches a stipulation of this Article 12, including but not limited to the inspection of the terrain and associated buildings of the Customer.

The Customer shall at all times provide his cooperation to an action of DoubleCOOL as referred to in this Article 12.

### **Article 13 Breaches of third party entitlements**

*13.1.* To the extent that DoubleCOOL manufactures products for the Customer by virtue of the Agreement and thereby makes use of drawings, dies, moulds and/or forms provided by the Customer, the Customer hereby guarantees towards DoubleCOOL that DoubleCOOL will not thereby breach any third party's intellectual property right. Any breach shall entitle DoubleCOOL to dissolve the Agreement by means of notice in writing, without being liable or otherwise creating any requirement to pay damages to the Customer. The Customer hereby indemnifies DoubleCOOL against all claims from entitled third parties in connection with a breach as specified in this Article 13.

### **Article 14 Failure to Comply and Force Majeure**

*14.1.* In the event that the Customer fails to meet an obligation under the Agreement(s) and/or one or more situations arise as described in Articles 6.2 to 6.4 and Article 9 of these General Terms and Conditions, then DoubleCOOL shall be entitled to (a) demand performance of the obligation in order to obtain the deliverables in respect of which the other party has obligated himself to DoubleCOOL, including but not limited to the obligation on the Customer to take delivery of the products, (b) to immediately (have) dissolve(d) the Agreement(s) in whole or in part by giving notice or dissolution, or (c) to suspend the fulfilment or further fulfilment of their obligations under the Agreement(s) and to recover the products, all the foregoing without prejudice to DoubleCOOL's entitlement to compensation for all consequential losses or damage suffered by DoubleCOOL, or to any entitlement which may accrue to DoubleCOOL, and without any liability to make any form of compensation on the part of DoubleCOOL.

*14.2.* In the event that DoubleCOOL dissolves, terminates (by giving notice or dissolution) or suspends the Agreement(s), then all of DoubleCOOL's claims against the Customer shall be due and payable immediately, and DoubleCOOL shall be entitled to immediately suspend further performance of other agreement(s), without prejudice to any entitlement potentially accruing to DoubleCOOL.

*14.3.* Matters of Force Majeure which shall in no circumstances be at the risk of DoubleCOOL include, but are not limited to, the following: (i) the behaviour of persons appointed by DoubleCOOL to fulfil their obligations towards the Customer, with the exception of cases of intentional damage or gross negligence, (ii) the unsuitability of products used by DoubleCOOL in fulfilling their obligations towards the Customer, (iii) the exercise of one or more entitlements by third parties in relation to the Customer in relation with the Customer's failure to fulfil his obligations under an agreement with that third party relating to the Delivery of the products. (iv) government legislation or orders prohibiting or limiting the use of the products delivered or to be delivered, (v) suspension or closure of DoubleCOOL's business, (vi) sickness of personnel, (vii) transport problems, (viii) import or export restrictions or prohibitions, (ix) failure to complete orders or late completion of work by DoubleCOOL's suppliers, (x) disruption to the process of producing the products, (xi) natural disasters or nuclear incidents, (xii) war or the threat of war, (xiii) negligence on the part of DoubleCOOL, with

the exception of intentional damage or gross negligence and/or (xiv) other circumstances beyond the reasonable control of DoubleCOOL.

#### **Article 15 Data Protection**

15.1. The Customer shall at all times comply with the applicable national and international laws and regulations regarding data protection and/or the sharing, transferring or otherwise processing of (personal) data, including, but not limited to, the General Data Protection Regulation (GDPR, “**Privacy Legislation**”).

15.2. If and when the Customer shares or otherwise processes data to which the Privacy Legislation applies, the Customer shall:

- (i) inform DoubleCOOL thereon beforehand or, if not possible, notify DoubleCOOL of this as soon as possible;
- (ii) provide its full cooperation to drafting, entering into and implementing all required agreements and other documentation, including, but not limited to, processor agreements;
- (iii) involve third parties only in the processing of such data if DoubleCOOL has given it's prior written consent thereto;
- (iv) ensure that all its affiliates or third parties involved in sharing or otherwise processing the data, comply with the Privacy Legislation at all times;
- (v) at DoubleCOOL's request and with due observance of the Privacy Legislation, provide all information that DoubleCOOL reasonably requires to comply with its obligations under the Privacy Legislation; and
- (vi) take sufficient technical and organisational measures to ensure a risk-adapted level of security for the processing of the relevant information and/or data.

15.3. DoubleCOOL and the Customer shall only process personal information or data or other information if this is strictly necessary for the purpose of the performance of an Agreement and shall only do so with due observance of the provisions related thereto in an Agreement and in any agreements, possibly entered into between DoubleCOOL and the Customer, that specifically relate to the Privacy Legislation, including, but not limited to, processor agreements.

15.4. If an Agreement is terminated (for any reason whatsoever) and/or at any other time upon DoubleCOOL's request, the Customer shall, in accordance with the Privacy Legislation, return all (personal) data and/or information (including all copies thereof) to DoubleCOOL immediately or destroy all such (personal) data and/or information.

#### **Article 16 Non-disclosure**

16.1. DoubleCOOL and the Customer shall not provide confidential information to third parties from and regarding the other Party, it's activities and relationships, which has come to their knowledge in the execution of the Agreement, unless (i) the provision of such confidential information is necessary to adequately execute the Agreement and the other Party has given its written consent thereto, or (ii) the respective party is under the legal obligation to disclose such information.

16.2. DoubleCOOL has the right to directly obligate employees of the Customer not to disclose any confidential information. DoubleCOOL shall inform the Customer of its intention to do so and shall provide the Customer with a declaration or agreement drawn up to that extent.

16.3. The Customer is obligated, and commits itself, to ensure that her employees and her contractors are subject to and shall remain subject to non-disclosure agreements which are at least equal to the provision as set out in Article 16.1 of these General Terms and Conditions. Upon request of DoubleCOOL, the Customer shall provide signed copies to DoubleCOOL for approval of the relevant provisions of such agreements with employees.

16.4. DoubleCOOL shall not be liable for fines, penalties or potential damages of Customer, as a consequence of a violation of such non-disclosure agreements by employees.

16.5. Customer shall indemnify DoubleCOOL against claims from third parties related to the not compliance or improper compliance with any non-disclosure agreement by an employee.

#### **Article 17 Penalty Clause**

17.1. In the event that the Customer acts in conflict with the provisions as set out in Article 12, 15 and/or 16 of these General Terms and Conditions, the Customer shall forfeit to DoubleCOOL, without prior written notice of default or notification being required, an immediately due payable penalty in the amount of €10,000 (in words: ten thousand euro) per violation and in the amount of €1,000 (in words: one thousand euro) for each day that such violation continues, without this penalty impairing, in any way whatsoever, DoubleCOOL's right to recover from the Supplier and/or third parties all actually incurred damage and/or damages to be incurred.

#### **Article 18 Termination and dissolution**

18.1. Where an agreement is entered into for an indeterminate period and because of its nature and content it does not terminate by virtue of its completion, then it may be terminated by DoubleCOOL by means of cancellation in writing. Where no explicit period of notice forms part of the agreement, then a reasonable period of notice is to be taken into account, with a maximum duration of one (1) month. DoubleCOOL shall in no circumstances be liable to pay compensation for damages on the grounds of cancellation of the Agreement.

18.2. In all cases where DoubleCOOL terminates the Agreement by way of dissolution or giving notice with the Customer, the Customer shall be obligated to reimburse DoubleCOOL for all damages, costs and loss of earnings, including but not limited to the costs of recovery and the costs of legal and other advice, and to return to DoubleCOOL all products which they have already delivered. The products shall continue to be at the risk of the Customer until such time as DoubleCOOL have received and approved the products in question. In the event of dissolution of the Agreement by the Customer, DoubleCOOL shall not be required to make compensation for damages and/or loss of earnings on the part of the Customer.

18.3. DoubleCOOL may terminate the Agreement with immediate effect in whole or in part without notice of default in the event that: (i) cessation of payments is granted to the Customer, whether or not provisionally, (ii) an application is made for the bankruptcy of the Customer or (iii) the

Customer's business is terminated or liquidated and/or (iv) a change takes place in the ownership or control of the Customer's business, or when the Customer is involved in or is the subject of a merger, demerger or division, or some comparable procedure. DoubleCOOL shall in no circumstances be liable to (i) reimburse monies already received or (ii) to pay compensation for damages.

#### **Article 19 Evidence**

*19.1.* Except where evidence is brought to the contrary, DoubleCOOL's administrative records shall be decisive in relation to the (monetary or other) extent of the obligations on either side as these flow from the Agreement(s).

*19.2.* Except where evidence is brought to the contrary, the totals, dimensions and weights specified on the invoice shall be deemed to be complete and accurate.

#### **Article 20 No Relinquishment**

*20.1.* An omission on the part of DoubleCOOL in demanding compliance with any stipulation in these General Terms and Conditions or an Agreement or in responding in some other way to a breach of these by the Customer or another party, shall under no circumstances entail that DoubleCOOL relinquish its entitlements to demand compliance with the respective stipulation of these General Terms and Conditions.

#### **Article 21 Applicable law**

*21.1.* The law of the Netherlands shall apply to all Offers, Agreements and other legal relationships between DoubleCOOL and the Customer, as well as to these General Terms and Conditions, unless expressly agreed otherwise. The stipulations of the United Nations Convention on Contracts for the International Sale of Goods (1980) shall not apply to the legal relationship between DoubleCOOL and the Customer.

*21.2.* All disputes arising out of or connected with the Offer and/or an Agreement or compliance therewith or other legal relationships with DoubleCOOL, as well as all disputes relating to these General Terms and Conditions shall be brought before the Competent Court at Rotterdam, the Netherlands.