

General terms and conditions

Article 1 - Definitions

Wherever used in these conditions, the following terms are understood to have the meaning given thereto below.

Activities:	all work, including unloading, receipt, storage, discharge, loading, stock management, assembly, order handling, order picking, preparation for shipping, invoicing, information exchange and management, transport whether or not by third parties, and the completion of customs declarations with regard to Goods.
Agreement:	the agreement concluded between Efulfilment and Client with regard to the Activities to be carried out by Efulfilment, of which these Conditions form part.
Auxiliary Persons:	all persons - not being the subordinates of Efulfilment - used by Efulfilment in the performance of the Activities.
Business Days:	all days, with the exception of Saturdays, Sundays and official public holidays as recognized in the country or region where Activities are to be performed.
Client:	the party granting an instruction for the performance of the Activities to Efulfilment and the party with whom the latter concludes the Agreement.
Conditions:	the conditions applicable to the Agreement, including these conditions dated August 2021 and revised versions.
Delivery:	the action as a result of which Efulfilment surrenders control of the Goods and allows the Client or a third-party to exercise control over the Goods, or if Efulfilment has assumed a transport obligation, the action as a result of which Efulfilment, with the explicit or tacit approval of a carrier, relinquishes control of the Goods to the latter.
Efulfilment:	a private limited liability company incorporated under the laws of the Netherlands, having its registered office in Almere, The Netherlands and its business office at Radioweg 4, 1324 KW Almere, The Netherlands, registered with the commercial register of the Dutch Chamber of Commerce under registration number 68240082, being the party concluding the Agreement with the Client and the party under whose title the Activities are performed.
Efulfilment Centre:	the space(s) where the Activities take place.
Force Majeure:	all circumstances that a diligent (logistics) service provider could not have avoided and the consequences of which it could not have prevented. Force majeure includes, but is not limited to, fire, explosion and flooding as a result of natural disasters, as well as the consequences thereof.
Freight Forwarding:	the transport of the Goods on behalf of the Client by one or more carriers subject to one or more appropriate transport agreements.
Goods:	the goods made available by or on behalf of the Client to Efulfilment or its Auxiliary persons with a view to the performance of the Agreement.
Receipt:	the action whereby the Client, with the explicit or tacit approval of Efulfilment or its Auxiliary Persons, relinquishes control of the Goods to the latter.
Stock Discrepancy:	an inexplicable difference between the physical stock and the stock administration of Efulfilment, subject to evidence to the contrary by the Client.

Article 2 - Scope

1. These Conditions govern all offers, agreements, legal and de facto acts regarding the Activities to be performed, insofar as these are not subject to mandatory law.

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Any contrary conditions or regulations of the Client are not applicable, unless accepted explicitly and in writing by Efulfilment in advance. These Conditions apply to the relationship between the parties, also after the Agreement is no longer in force.

2. Efulfilment is entitled to engage Auxiliary Persons in the performance of the Activities, unless agreed otherwise with the Client in writing. Subordinates or Auxiliary persons who are held liable in relation to the performance of activities on behalf of Efulfilment can invoke all clauses regarding the exclusion or limitation of liability as stipulated in these Conditions.
3. If Efulfilment has assumed a transport obligation, the relationship between the parties will, in accordance with the provisions of these Conditions, be subject to (mandatory) treaties, statutes and regulations, the provisions of the transport documents and, in case of domestic road transport in the Netherlands.
4. All agreements, tenders, instructions regarding warehousing, custody, handling and delivery of goods, shall be recorded in writing.
5. Oral or telephone communications or arrangements shall only be binding on Efulfilment if immediately confirmed in writing.

Article 3 – Obligations of Efulfilment

Efulfilment is obliged:

1. to directly or indirectly take Receipt of the agreed Goods at the agreed place, time and in the agreed manner, on condition that these are properly packaged, accompanied by the required documents and that the Goods have been made available to Efulfilment or its Auxiliary Persons;
2. to assume responsibility for the loading, stowage and unloading at the Efulfilment Centre, and the receipt and release of Goods, unless these, in the opinion of Efulfilment or its Auxiliary Persons, constitute such a hazard or nuisance that such activities cannot be demanded of Efulfilment or its Auxiliary Persons;
3. to perform additional work in consultation with and on instructions of the Client, if such work can in all reasonableness be expected of Efulfilment;
4. to report damage and missing items regarding received Goods as promptly as possible in writing to the Client and to request its instructions for further action;
5. to guarantee the soundness and suitability of the materials used in its operations;
6. to deliver the Goods in the same condition as in which they were received or alternatively in the agreed condition;
7. to observe confidentiality towards third parties with regard to all facts and information acquired exclusively in the performance of the Agreement, with the exception of information that must be provided by law to competent authorities and information exchange with third parties as a part of normal business operations.
8. to have the Activities relating to the Goods take place in the Efulfilment Centre as agreed with the Client;
 - (i) if no specific Efulfilment Centre is agreed upon, Efulfilment is free to choose a suitable space and to move Goods between suitable spaces;
 - (ii) if a specific Efulfilment Centre has been agreed upon, Efulfilment is entitled to move the Goods in consultation with the Client if such is desirable in view of good business operations and/or proper performance of the Activities. The Client may not refuse its permission for the movement of Goods if the new spaces are comparable or better;

The movement of Goods as referred to in this clause 8 of this article will be for the account of Efulfilment, unless such a move is required:

- (i) in the interest of the Client, or on its instructions, and/or;

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- (ii) is the consequence of circumstances for which Efulfilment is not liable, and/or;
- (iii) is the consequence of circumstances that in all reasonableness are not for the risk and/or account of Efulfilment, and/or;
- (iv) is the consequence of regulations and/or instructions of the competent authorities;

The transport related to the movement of Goods takes place subject to the regulations referred to in article 2 clause 3 of these Conditions.

9. Efulfilment will take all reasonable measures, including those not ensuing directly from the Agreement, to protect the interests of the Client and its Goods. Efulfilment will - if possible - consult with the Client in advance. If no timely prior consultation is possible, Efulfilment will take those measures that it deems appropriate in the interest of the Client and will inform the Client thereof as soon as possible.
10. Unless expressly agreed with the Client in writing Efulfilment shall not be obliged to effect any insurance for the Activities and/or the Goods.
11. Efulfilment will, unless agreed otherwise, grant the Client and, for the risk of the latter, its designated persons access to those places where the Goods are located during office hours on Business Days, on condition that:
 - (i) the request for access is made in due time to Efulfilment in writing;
 - (ii) the Client agrees upon supervision by Efulfilment;
 - (iii) the inspection takes place according to the company rules of Efulfilment; and
 - (iv) the information acquired by the Client during the inspection regarding other Goods present in the space(s) is not shared with third parties.

Any costs related to the inspection are for the Client's account;

Article 4 – Consequences of non-fulfilment of obligations by Efulfilment

If Efulfilment persistently fails imputably in the fulfilment of one or more of its obligations as referred to in article 3 above, the Client, without prejudice to its right to compensation of damage in accordance with article 5 below, can terminate (ontbinden) the Agreement with immediate effect, in full or part, after:

- (i) serving Efulfilment within eight (8) days from the moment the Client became aware or could reasonably have been aware of the action or omission that gave rise to the complaint, but no later than within fourteen (14) days after the services were rendered, with a letter by registered mail or bailiff's writ setting out the reasons why Efulfilment has defaulted, giving a minimum term of 30 (thirty) days for fulfilment; and
- (ii) Efulfilment has on expiry of the aforementioned term not yet fulfilled its obligations.

The Client does not have this right if the default, in view of its special nature or minor importance, does not justify the dissolution (ontbinding) of the Agreement and its consequences.

Article 5 – Liability of Efulfilment

1. Efulfilment is, save for Force Majeure and without prejudice to the other provisions of these Conditions, liable for damage to and/or loss of the Goods that has occurred during the period from Receipt to Delivery. Efulfilment is not and will not be liable for damage resulting from any non-fulfilment by the Client of any obligation of the latter by virtue of the Agreement(s) and the conditions applicable thereto.
2. Liability of Efulfilment in case of transport is maximized at the liability limit set for to the relevant transport modality, unless agreed otherwise in writing. Efulfilment is not liable for any damage to the extent Efulfilment demonstrates that the damage may have resulted from the absence or defectiveness of the packaging of the Goods that in view of their nature and manner of transport should have been properly packaged. If in case of road transport by Efulfilment the Goods are not taken in Receipt at/in the agreed place, time and manner, the liability for any resulting damage is limited to twice the freight charges as agreed for the road transport part.

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3. Any liability is conditional on the Client providing Efulfilment with a final term which is not fulfilled by Efulfilment if such term can still be relevant.
4. As regards to any other Activities not being road transport, liability of Efulfilment for damage to or loss of the Goods is limited to the amount to be invoiced by Efulfilment to the Client per event or series of events with one and the same cause of damage.
5. Any compensation to be paid by Efulfilment for damage to or loss of the Goods will never exceed the value of the Goods as substantiated by the Client. If no substantiation is provided, the value is based on the customary market price for Goods of the same nature and quality, applicable at the time and place of Receipt.
6. Subject to the provisions of article 5 clause 10 below, the liability of Efulfilment for any damage other than damage to and/or loss of the Goods, is also limited to the amount to be invoiced by Efulfilment to the Client per event or series of events with one and the same cause of damage, whilst understanding that if Efulfilment performs customs formalities or acts as tax representative, Efulfilment is not liable for any losses, unless the Client proves that such losses are the result of fault or negligence on the part of Efulfilment.
7. Persons associated with Efulfilment cannot be held liable. The Client indemnifies Efulfilment and all persons associated with Efulfilment against any and all claims by third parties for which Efulfilment's liability is limited. The indemnity also covers all related costs and expenses.
8. At all times, Efulfilment's total liability is limited to lowest of (i) the amount to be invoiced by Efulfilment to the Client per event or series of events with one and the same cause of damage or (ii) EUR 10,000 (ten thousand euro). The only exception to this maximum liability is in case of intent (opzet) and/or gross negligence (bewuste roekeloosheid) of Efulfilment.
9. Any Stock Discrepancies must be reflected by a registration of the physical stock, which must be carried out for the account of the Client at least once a year and at the time that the Agreement ends.
10. Any shortfalls and surpluses will be set off against one another. Efulfilment can only liable for Stock Discrepancies if and insofar as, taking into account the calculation used in the registration of the stock, the shortfall (missing items) surpass any surpluses by at least 1% (one percent) of the number of Goods handled under the Agreement each year. Efulfilment will notify the Client as soon as possible of any change to its stock administration that does not result from the Receipt and release of Goods. It is explicitly agreed that these Conditions also govern the liability of Efulfilment for stock discrepancies, including the liability limits as described in this article 5.
11. Efulfilment accepts no liability for loss of profit, consequential loss and immaterial loss, irrespective of the cause.
12. All claims relating to the Agreement will become prescribed (verjaren) after 12 (twelve) months and will lapse (vervallen) after 18 (eighteen) months.
13. The time periods referred to in clause 5.12 above will – in case of general or partial loss, damage, delay or Stock Discrepancy – commence on the first of the following days:
 - (i) the day on which the Goods have or should have been delivered by Efulfilment; or
 - (ii) the day on which Efulfilment has reported the loss, damage or existence of the Stock Discrepancy to the Client.
14. If Efulfilment is held liable by third parties, including a government authority, the time periods referred to in clause 5.12 above will commence on the first of the following days:
 - (i) the day on which Efulfilment is held liable by such third party;
 - (ii) the day on which Efulfilment has fulfilled the claim brought against Efulfilment.
15. If Efulfilment or a third party engaged by Efulfilment has objected or appealed against a claim, the time periods referred to in clause 5.12 will commence on the day after the day on which decision on the objection and/or appeal has become irrevocable.
16. For all other claims, the time periods referred to in clause 5.12 will commence on the day on which they are due.

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17. The time periods referred to in clause 5.12 will for all claims relating to the Agreement in any event commence on the day following the day on which the Agreement has ended.
18. Efulfilment cannot rely on the limitation of liability stipulated in this article in the event of either intent or serious recklessness of Efulfilment.

Article 6 - Obligations of the Client

The Client is obliged:

1. to promptly provide Efulfilment with all information and documents relating to the Goods and the handling thereof, of which it knows or should know that such are of importance to Efulfilment, unless the Client can prove that Efulfilment has or should have such information in its possession. The Client guarantees the correctness of the provided information and that the provided instructions and Goods are in accordance with current laws and regulations;
2. to make the agreed Goods, in proper packaging, available to Efulfilment or its Auxiliary Persons at the agreed place, time and manner, accompanied by a waybill for road transport (if necessary) and any other documents agreed and/or required by law;
3. to assume responsibility for the loading, stowage and unloading of Goods, unless:
 - (i) article 3 clause 2 is applicable; or
 - (ii) the parties have agreed otherwise in writing; or
 - (iii) otherwise ensues from the nature of the intended transport, taking the applicable Goods and vehicle into account;
4. to indemnify Efulfilment against any loss and/or damage it suffers which is or are related to a breach of contract by the Client and additionally the Client will pay all costs and expenses (including professional fees) incurred in connection with, and Efulfilment reasonably charges for, dealing with such breach and its consequences.
5. to indemnify Efulfilment and its subordinates and/or Auxiliary Persons at its/their first request against third-party claims outside contract for any damage and/or financial loss, related in any manner to the performance of this or separate A(a)greement(s) and the C(c)onditions applicable thereto, including – but not limited to – claims based on product liability and/or intellectual property rights. This duty of indemnification also applies if the Client fails to fulfil any obligation imposed on it by law, these Conditions or the Agreement, or in case the damage or financial loss is caused by circumstances that fall under the risk of the Client;
6. to vouch for the Goods and equipment that it makes available to Efulfilment or its Auxiliary Persons;
7. to promptly compensate, besides the agreed fee, any other costs ensuing from this or separate A(a)greement(s) and the C(c)onditions applicable thereto;
8. to promptly compensate the costs of inspections, follow-up work, clearing work and the discharge of waste ensuing from the performance of this or separate A(a)greement(s) and the C(c)onditions applicable thereto;
9. to fully insure the Goods at its own costs against all risks to the full insurable value thereof (including, but not limited to, all duties and taxes);
10. on termination of the Agreement, to take receipt of Goods located at Efulfilment or its Auxiliary Persons no later than the last Business Day before the final date of the Agreement and to remove these, after payment of all monies owed to Efulfilment and of any monies of which it is known at that time that such will be owed. The Client can suffice with providing security as deemed appropriate by Efulfilment for all that the Client may owe after the termination of the Agreement, insofar as known and/or can be estimated in all reasonableness by Efulfilment;
11. to observe confidentiality towards third parties with regard to all facts and information acquired exclusively in the performance of the Agreement, with the exception of information that must be provided by law to the competent authorities and information exchange with third parties as a part of normal business operations; and

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12. to take immediate receipt of the Goods and/or to remove these, if in the opinion of Efulfilment these constitute such a hazard or nuisance that it cannot be demanded of Efulfilment that it keep these in storage any longer; In deviation of the provisions of article 3 clause 2, the release and loading of Goods will take place by or on behalf of the Client and for its risk and account.
13. If Goods and/or activities are subject to government regulations, including customs, excise and tax regulations, the Client will promptly provide Efulfilment with all information and documents required by the latter to comply with said regulations.
14. The provision of information and/or documents to Efulfilment, as required for the performance of formalities as stipulated by the aforementioned government regulations, entails an instruction to that effect. Efulfilment all times reserves the right whether or not to fulfil such instruction.
15. The Client expressly represents and warrants (which representations and warranties shall be deemed to be repeated by the Client on each day for the duration of the Agreement) that:
 - (i) it is and remains the uncontested legal and beneficial owner of the Goods;
 - (ii) the Goods are not the subject of any claim, criminal or regulatory investigation or legal proceedings;
 - (iii) all rights of ownership and title over the Goods will be established and verified by the Client and it is acknowledged and understood that Efulfilment has no responsibility or liability with respect to any conflicting claims arising out of a dispute contesting rights of ownership or title to the Goods;
 - (iv) it is authorised to accept the terms of and conclude the Agreement not only for itself, but also as agent for and on behalf of all other (legal) persons who are, or may thereafter become, interested in the Goods; and
 - (v) it is not contracting or dealing as a consumer when entering into an Agreement.

Article 7 – Consequences of non-fulfilment of the obligations by the Client

1. If the Client fails in the fulfilment of one or more of its obligations as referred to in article 6 above, Efulfilment may, without prejudice to its right to compensation, terminate the Agreement, in full or part, with immediate effect, after giving the Client, in writing, a final term of at least 7 (seven) days for fulfilment. Efulfilment may, if the giving of such a final term would disproportionately harm its operational interests, also terminate the Agreement without providing any such final term.
2. Efulfilment is entitled to suspend the performance of its obligations if the Client fails to fulfil one or more of its obligations as referred to in article 6. This right of suspension can also be invoked against creditors of the Client. The Client may not suspend any of its obligations under any Agreement or any Condition.
3. If the Client fails to fulfil its obligations as referred to in article 6, Efulfilment is – at its sole discretion – entitled to:
 - (i) move the Goods to other spaces for the risk and account of the Client, and/or;
 - (ii) effect the private or public sale of the Goods for the account of the Client after expiry of 14 (fourteen) days after notifying the Client in writing and providing notification of the intended sale, without any further formalities being required; and/or
 - (iii) abandon or destroy the Goods if it is likely that costs of sale of the Goods will be higher than the proceeds thereof, or if, despite a reasonable attempt thereto by Efulfilment, no buyer can be found, whereby the costs of abandonment or destruction will be for the account of the Client.

Article 8 - Liability of the Client

1. The Client is liable for all damage to the Efulfilment Centre and/or the property of Efulfilment, of its Auxiliary Persons, of its subordinates and of its other Clients, as well as for personal injury caused by the Client, its Goods, including the packaging of its Goods, its Auxiliary Persons, subordinates and any other persons acting on its instructions.
2. The Client is liable to Efulfilment for any losses, including fines, interest charges, penalties and forfeitures, including the consequences of the failure to (timely) clear customs documents, ensuing from inter alia the inaccuracy, carelessness or incompleteness of the instructions and the information and/or documents provided by the Client, the failure to (timely) make the Goods available at the agreed time, place and manner, as well as the failure to (timely) provide documents and/or instructions.

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3. The Client is liable to Efulfilment for any losses ensuing from the failure to fulfil its obligations under this or separate agreement(a)greement(s) and the C(s)onditions applicable thereto.
4. The Client will compensate Efulfilment for any fine imposed as a result of overloading in case of road transport.

Article 9 - Other

1. Efulfilment may terminate (opzeggen) the Agreement with immediate effect and without a notice period being applicable if the Client:
 - (i) ceases in full or significantly to practice its profession or business;
 - (ii) loses the power of disposal over its capital or a significant part thereof;
 - (iii) loses its status as a legal entity, is wound up or is factually liquidated;
 - (iv) is declared bankrupt;
 - (v) offers a settlement in lieu of bankruptcy;
 - (vi) applies for suspension of payment;
 - (vii) loses the power of disposal of its Goods or a significant part thereof as a result of attachment by third parties;
 - (viii) does not fulfil its obligations as referred to in article 6.

Article 10 – Complaints

1. If the Goods are delivered by Efulfilment without the consignee and/or Client having determined the condition thereof in the presence of Efulfilment, the Goods are deemed to have been delivered in a good condition, subject to evidence to the contrary.
2. If the Goods are delivered by Efulfilment without the consignee and/or the Client having provided Efulfilment with any written reservations specifying the general nature of loss of or damage to the Goods, the Goods are,
 - (i) in case of loss or visible damage, by no later than the time of Delivery;
 - (ii) in case of damage that is not externally visible, within the period prescribed by law for the transport modality chosen for the Delivery or, in the absence of a (statutory) arrangement, within five Business Days after Delivery, deemed to have been delivered in a good condition, subject to evidence to the contrary. The day of Delivery is not included when determining the aforementioned time periods.
3. In case of domestic transport, the Goods are regarded as lost if they are not delivered within 30 days of the day on which they were accepted for transport and it is unknown where they are located.

Article 11 - Payment conditions

1. All amounts owed by the Client to Efulfilment will be paid in accordance with the agreed term, whereby if no term is agreed, a term of 14 (fourteen) days after the invoice date will apply. Failure to observe this term is regarded as being in default.
2. All amounts and prices are calculated on the basis of the information provided by the Client. In case of changes in the amount or specifications of the Activities and/or Goods, Efulfilment reserves the right of price adjustment. Efulfilment obligates itself at the same time to inform the Client about any necessary price adjustment as soon as reasonably possible. Furthermore, Efulfilment reserves the right of price increase in case of increases in prices payable by Efulfilment in relation to inter alia the Activities and/or Goods,
 - (i) third party services used by Efulfilment and
 - (iii) in case of increases in prices of other external costs for Efulfilment, during this or separate A(a)greement(s) and the C(c)onditions applicable thereto.
3. If the Client fails to pay any amount due within the term as referred to in this article, it will owe statutory (commercial) interest in accordance with Article 6:119a or Article 6:119 of the Dutch Civil Code, calculated from the due date until the date of payment in full.

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4. Efulfilment is entitled to charge the Client any resulting judicial and extrajudicial collection costs. The extrajudicial collection costs are due from the moment that the Client is in default and are set at 15% (fifteen percent) of the claim with a minimum of EUR 150 (one hundred and fifty euro).
5. The Client will at all times compensate Efulfilment for any amounts levied or to be levied by government authorities in relation to this or separate A(a)greement(s) and the C(c)onditions applicable thereto.
6. The Client will at the first request of Efulfilment provided all desired security for all that the Client owes or will owe Efulfilment. This obligation also exists if the Client itself has already furnished security for payment.
7. The Client has no right to suspend payment, nor to set off any claims or costs against any amounts due to Efulfilment relating to this or separate A(a)greement(s) and the C(c)onditions applicable thereto or against other costs chargeable to the Goods.
8. All amounts referred to this article are immediately payable and eligible for set off by Efulfilment in case of the circumstances referred to in article 7 of these Conditions.

Article 12 - Security

1. Efulfilment is entitled to refuse anyone the release of Goods, documents and monies, held or to be acquired by Efulfilment in connection with the Agreement.
2. Efulfilment can exercise a right of retention in respect of all Goods, documents and monies that it holds or will acquire as security for all claims that Efulfilment has or will have on the Client and/or the owner of the Goods, also with respect to claims that are not related to those Goods.
3. A right of pledge (recht van pand) is established to the extent possible by operation of law – or shall be established by and together with the Client at the first request of Efulfilment – on all Goods, documents and monies that Efulfilment holds or will hold in relation to the Agreement as security for all claims that Efulfilment has or will have on the Client and/or the owner of the Goods.
4. Efulfilment may regard any party who, on behalf of the Client, entrusts Goods to Efulfilment for the performance of Activities, as a party authorized by the Client to establish a right of pledge on those Goods.
5. If a dispute arises on settlement regarding the amount due or if said amount cannot be calculated promptly, the Client or the party demanding Delivery will at the request and election of Efulfilment immediately pay that part of the amount due on which agreement exists and provide security for payment of the disputed remainder, the amount of which has not yet been determined.
6. The sale of any collateral will take place at the risk and account of the Client in the manner determined by law or will take place by private sale if the parties agree thereto.
7. The Client will at the first request of Efulfilment provide security for costs paid or to be paid by Efulfilment to third parties or government bodies and for any other costs that Efulfilment has incurred or expects to make on behalf of the Client, including freight charges, port levies, duties, taxes and premiums.

Article 13 – Dispute resolution

All legal relationships with Efulfilment are governed by Dutch law. Any dispute shall be submitted to the District Court of Amsterdam, The Netherlands in the first instance.