



# **Seafarma**

## **Medical Supplies**

Terms and Conditions



## Inhoud

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## **General terms Seafarma B.V. with its registered office in Spijkenisse**

1. In these terms Seafarma B.V. shall be taken to mean: Seafarma B.V., with its registered office in Spijkenisse, Nederland, registered in the trade register of the Chamber of Commerce in Rotterdam under number 24274073.
2. In these terms “Purchaser” shall be taken to mean: each (legal) person who has concluded an agreement with Seafarma B.V. or wishes to conclude an agreement with Seafarma B.V. and, in addition to this legal person, also his representative(s), authorised agent(s) and legal successor(s).

### **Article 1: General/Applicability**

1. These general terms shall apply to all offers by Seafarma B.V. to Purchaser and to all agreements between Seafarma B.V. and Purchaser, and concern all items, services and other activities to be delivered by Seafarma B.V..
2. Departures from these terms shall only be valid if and in so far as they have been agreed in writing between Seafarma B.V. and Purchaser.
3. The applicability of the general terms of Purchaser (to which a reference is made in documents from Purchaser) shall be explicitly rejected in this respect.
4. All offers of Seafarma B.V. shall be free of obligations and shall not commit Seafarma B.V., unless explicitly agreed otherwise in writing.
5. An agreement shall only be concluded when Seafarma B.V. has confirmed the assignment of Purchaser in writing or when Seafarma B.V. commences the implementation of the assignment.
6. Seafarma B.V. shall never agree to undertake the transport of goods. In the event Seafarma B.V. agrees to undertake forwarding in the broadest sense (including acting as a tax representative), the version of the Dutch Forwarding Terms (General terms of FENEX, Dutch Organisation for Forwarding and Logistics) that was most recently filed at the Registrar of the courts in Amsterdam, Arnhem, Breda and Rotterdam shall apply, in addition to these terms.



## Article 2: Prices

1. All prices shall be net prices and exclude VAT, transport and packaging costs, unless explicitly agreed otherwise in writing, and shall be based on the prices and exchange rates that apply at the time of the offer.
2. If material prices, freight charges, wages, taxes, import duties, levies or other expenses on the part of the government are introduced or increased after the date of conclusion of the agreement with Purchaser, however before the delivery of the items and/or services and/or other activities, as well as in other cases when certain factors increase the price in the opinion of Seafarma B.V., for example exchange rate fluctuations, price changes regarding raw materials and semi-finished products, and price changes introduced by suppliers, Seafarma B.V. shall be entitled to change the agreed price and charge a proportional increase of the price to Purchaser, without Purchaser being entitled to dissolve the agreement.
3. Seafarma B.V. shall notify Purchaser at once in writing about price increases.

## Article 3: Delivery of items, services and other activities, providing samples

1. Delivery shall take place on the basis of the stipulation “ex works”, in conformity with Incoterms 2010 or its most recent publication, unless explicitly agreed otherwise in writing.
2. Partial deliveries shall be allowed and can be charged by Seafarma B.V. at once.
3. The terms of delivery as stated by Seafarma B.V. for items, and implementation periods for services and/or other activities shall apply as indicative, they shall never be considered as fatal periods and shall not be binding for Seafarma B.V..
4. If the delivery periods and implementation periods are exceeded, this shall not entitle Purchaser to claim compensation in whatever form, to not accept the agreement or entirely dissolve the agreement or partly or wholly suspend the compliance with any obligation of Purchaser from the agreement, unless Purchaser is entitled to do this by virtue of statutory provisions (imperative law). The obligation of Seafarma B.V. to supply shall be complied with by offering the items once-only. The receipt signed by Purchaser or by the person who represents Purchaser shall serve as conclusive evidence of delivery.
5. If Purchaser does not take delivery of items or does not do this within the specified time, Seafarma B.V. shall be entitled to store the items at the risk of Purchaser or, at its option, to sell them to a third party. Storage and other costs shall be incurred by Purchaser.



6. When the required data for the implementation of the delivery have not been made available to Seafarma B.V. within the specified time by Purchaser, the delivery periods shall in any case be deferred with the same period.

7. Samples shall only be provided by way of specification, without the item having to comply with this sample.

#### **Article 4: Payment**

1. All payments shall take place within 30 days after the invoice date, unless explicitly agreed otherwise in writing.

2. In case of overdue payment, Purchaser shall be in default without further notice of default and Purchaser shall pay the commercial interest as from the due date. All extrajudicial collection costs incurred by Seafarma B.V. that go beyond sending a single (possibly repeated) warning or merely submitting a (non-accepted) settlement offer, obtaining simple information or drawing up a file in the usual way shall be incurred by Purchaser. These extrajudicial costs shall be fixed at a minimum of 15% over the first 5.000,- to be collected. Over the amount exceeding 5.000,- a rate of 10% shall be charged. The extrajudicial costs are set at a minimum of Euro 800,-.

3. Purchaser shall not be allowed to set off a claim of Purchaser against Seafarma B.V. against a claim of Seafarma B.V. against Purchaser.

4. Payments by Purchaser shall first be deducted from the extrajudicial and judicial (collection) costs to be paid by Purchaser, the interest and subsequently from demandable invoices, whereby older invoices have priority to new invoices, irrespective of whether the indications of payments are different.

#### **Article 5: Packaging**

1. The packaging and labelling of products to be supplied shall be determined by Seafarma B.V. as a good entrepreneur in conformity with the applicable statutory standards.

2. Purchaser shall be responsible for storage or processing of the empty/used packaging materials in conformity with the applicable statutory provisions.

3. The pallets, crates etc. made available by Seafarma B.V. for packaging and shipment, whether or not with a deposit, shall remain the inalienable property of Seafarma B.V..



4. Purchaser shall be obliged to return this packaging at its own expense and risk to Seafarma B.V., to the address stated by Seafarma B.V., unless explicitly agreed otherwise.
5. The packaging possibly charged by Seafarma B.V. shall be credited at the full price, providing it is in a good condition and providing it is returned carriage paid within one month after the date of the invoice in question.
6. Seafarma B.V. shall be entitled to charge Purchaser for the costs of replacement, repair or completion with regard to returned damaged or incomplete packaging materials/packaging, to be decided by Seafarma B.V. based on fairness and reasonableness. If Seafarma B.V. charged a deposit for the packaging, it shall be entitled to deduct these costs from the deposits to be credited and, if necessary, recover the extra costs from Purchaser.

## **Article 6: Retention of title, right of pledge and right of retention**

1. Seafarma B.V. shall supply the items to Purchaser on the suspensive condition that Purchaser fully meets its obligations that exist towards Seafarma B.V. at any moment. The retention of title implied in this also includes (i) new items created with the supplied items, (ii) all claims regarding considerations of items supplied on the basis of this agreement or any other agreement of whatever nature by Seafarma B.V. to Purchaser or items, services and/or other activities still to be supplied by Seafarma B.V. to Purchaser and, (iii) claims due to failure in complying with the agreements referred to under (ii), which result in damages and compensation of extrajudicial and judicial costs, including contractual and statutory interests, fines and incremental penalties.
2. In the event that Purchaser does not comply with its obligations, Seafarma B.V. shall be entitled to take the supplied items back without any warning, notice of default or judicial intervention, without prejudice to the other rights of Seafarma B.V. that are connected to Purchaser failing to comply with its obligations. Purchaser shall make the supplied items available to Seafarma B.V. and, if necessary, offer Seafarma B.V. access to all areas where goods of Seafarma B.V. are located.
3. All items, funds, monetary values, insurance proceeds and/or documents which Seafarma B.V. has in custody and/or shall obtain for whatever reason and/or for whatever assignment for or on account of Purchaser, or which Seafarma B.V. has to pay and/or will have to pay to Purchaser, shall serve Seafarma B.V. as possessory pledge for all claims that Seafarma B.V. has and/or may have against Purchaser.
4. Seafarma B.V. has a right of retention against everyone with regard to all items, funds, monetary values, insurance proceeds and/or documents, which Seafarma B.V. has in custody and/or shall obtain for whatever reason and/or for whatever assignment.



5. If Purchaser does not pay the claim, Seafarma B.V. shall be entitled to sell the security or all items that Seafarma B.V. keeps in custody on account of the right of retention (in public) according to the manner stipulated by law.

### **Article 7: Failures; examination and time limits for lodging a complaint**

1. In the event of delivery of items, Purchaser shall examine the supplied items within 14 days after delivery – however in any case before Purchaser uses, consumes or sells on the items - and report any complaints regarding visible failures and/or failures that are observable with any examination in writing to Seafarma B.V. within 5 days after the expiry of the examination period, in default of which each claim of Purchaser against Seafarma B.V. shall lapse. Complaints with regard to failures that are first discovered later when Purchaser uses or consumes the items shall be reported to Seafarma B.V. in writing within 14 days after they should have been discovered in reason by Purchaser, however at the latest 2 months after delivery, in default of which each claim of Purchaser against Seafarma B.V. shall lapse. With regard to items with an expiry date, it applies that each claim of Purchaser against Seafarma B.V. shall lapse when the expiry date printed on the items or on the packaging has expired.

2. In the event of services and/or other activities, Purchaser shall have examined them within 14 days after having completed them and if there are any complaints with regard to visible failures and/or failures that are observable with any examination, Purchaser shall report them to Seafarma B.V. in writing within 5 days after the expiry of the examination period, in default of which each claim of Purchaser against Seafarma B.V. shall lapse. Failures that are first discovered later when Purchaser uses or consumes the items shall be reported to Seafarma B.V. in writing within 14 days after they should have been discovered in reason by Purchaser, however at the latest 2 months after completion of the services and/or other activities, in default of which each claim of Purchaser against Seafarma B.V. shall lapse.

3. Despite possible complaints with regard to failures, Purchaser shall be obliged to pay the agreed price within the specified time.

### **Article 8: Guarantee provision**

1. With due observance of article 7 (Failures: examination periods and time limits for lodging a complaint) Seafarma B.V. shall guarantee that the items, services or other activities to be supplied meet the usual requirements and standards that can be set in this respect and that they shall be free of whatever failures. If Seafarma B.V. makes use of services of activities of third parties with the implementation of the agreement or if Seafarma B.V. has used the supplied items of third parties, the guarantee shall be limited to the guarantees provided by these third parties.



2. The guarantee shall apply during 2 months after delivery of the items and/or after performing the services and/or other activities. If there are items for which a latest date of durability has been established, the guarantee shall lapse after this date has expired. If Purchaser has discovered the failure after the expiry of the guarantee period, Purchaser cannot commence legal action anymore or advance defences for the reason that the supplied items, the performed services or activities do not comply with the agreement.

3. If a supplied item does not meet the aforementioned guarantee, the item in question shall be replaced or repaired or compensated entirely or partly, to be decided by Seafarma B.V. without charging costs to Purchaser, on the condition that the complaint has been lodged in good time in accordance with article 7. Items that are returned to Seafarma B.V. for repair and/or replacement and/or compensation shall be sent at the risk of Purchaser. If the implemented services and/or other activities do not comply with the aforementioned guarantee, Seafarma B.V. shall correct the failure(s) that come under the guarantee without charging costs to Purchaser, on the condition that the complaint has been lodged in good time in accordance with article 7.

4. The guarantee shall not apply when the failure was caused as a result of (i) any government regulation regarding the nature or quality of the applied materials, (ii) the failure to comply with instructions of Seafarma B.V. and/or the producer, (iii) incorrect, improper use or misuse, including the use by an incompetent person, (iv) poor treatment, including treatment by an incompetent person (v) maintenance that has not been carried out or which has been carried out incorrectly, (vi) using or letting others use the item for purposes for which the item is not intended.

5. The guarantee shall only be provided to Purchaser and not to successive successors in title.

6. Seafarma B.V. shall not be obliged to provide any guarantee as long as Purchaser has not complied with its obligations.

## **Article 9: Liability**

1. The liability of Seafarma B.V. shall be limited to the amount that will be paid under the liability insurances of Seafarma B.V.. If there is no payment under the liability insurances, the liability of Seafarma B.V. shall be limited to the net invoiced value of the items, services or other activities in question (with a maximum of Euro 10,000.- per event or series of events as a result of one and the same cause), unless Purchaser proves that the loss was caused with deliberate intent or through wilful recklessness of Seafarma B.V. itself or its managers.

2. Except for provisions of imperative law with regard to (product) liability, Seafarma B.V. shall not be liable for loss as a result of improper use, processing or treatment of the supplied items, whether or not in violation with the standards and values that apply in the branch.



3. However, Seafarma B.V. shall never be liable for:

- a. loss, caused by subordinates of Seafarma B.V. and/or by auxiliary persons called in by Seafarma B.V. with deliberate intent or wilful recklessness that can be equated with deliberate intent;
- b. indirect loss, including indirect loss caused by an inadequate item, consequential loss, lost profit, missed savings, loss caused by product recalls, loss through business interruptions, loss of clients, and loss of reputation and/or goodwill;
- c. damage to property in the care, custody or control of, but not owned by the insured, including damage that was caused to items in the vicinity of the place where work is carried out as a result of or during the implementation of services and/or other activities.

4. Announcements by or on behalf of Seafarma B.V. with regard to quality, composition, treatment in the broadest sense, possibilities of application, qualities etc. of the goods shall not bind Seafarma B.V., unless they are drawn up in writing and explicitly in the form of a guarantee.

## **Article 10: Suspension, termination and dissolution**

1. Seafarma B.V. shall be entitled to suspend the implementation of the agreement or, at its option, terminate or dissolve the agreement wholly or in part with immediate effect through a written statement and without prior notice of default, notification of judicial intervention, while retaining all its rights to compensation of costs, loss and interest to which it is entitled, and without Seafarma B.V. being obliged to pay any compensation, if:

- a. Purchaser is declared bankrupt, has applied for a moratorium or bankruptcy or is put into administration;
- b. Purchaser has not complied with one or several of its (payment) obligations resulting from or otherwise related to the agreement, or has not complied with these obligations properly, fully or in time, or when it is certain that compliance with the obligations will be impossible without a breach;
- c. Seafarma B.V. has good grounds for fearing that Client will not be able and/or is not or will not be prepared to comply with its obligations;
- d. Purchaser takes a decision to wind up and/or close down Purchaser's company/activities
- e. Purchaser loses the disposition over its assets or, when Client is a natural person, is placed under guardianship, or passes away;

2. All claims that Seafarma B.V. should have against Purchaser at the time that one or several conditions apply as referred to in paragraph 1 of this article, shall be due and payable fully and forthwith.



## Article 11: Circumstances beyond one's control

1. Seafarma B.V. shall not in any event be obliged to comply with its obligations from the agreement, and shall not be obliged to pay any compensation in the event of circumstances beyond its control. Circumstances beyond its control on the part of Seafarma B.V. shall include the following circumstances:
  - a. mobilisation, fire, smoke, explosion, water as an extinguishing agent, theft, natural disasters, job strikes, traffic restrictions, road blockades, war, danger of war, export and import bans, transport problems, restrictive measures of any government, accidents at work and/or operational failures;
  - b. sickness of staff of Seafarma B.V. or staff of auxiliary persons called in by Seafarma B.V.;
  - c. a general lack of required raw materials and other raw materials for realising the items, services or items to be supplied by Seafarma B.V. and/or services required for other activities;
  - d. not foreseeable stagnation with suppliers or other third parties on which Seafarma B.V. depends;
  - e. if Purchaser, third parties of persons for whom Seafarma B.V. is liable do not or do not fully comply with any regulations set by the government or instructions given by the government or on the part of Seafarma B.V. (including those in these terms);
  - f. any failure in performing an activity, which was not assigned to Seafarma B.V. explicitly or separately;
  - g. all other circumstances that Seafarma B.V. could not have avoided, prevented or halted in reason, even if these circumstances could already have been anticipated at the time of concluding the agreement. This shall also include similar circumstances with auxiliary persons as well as an attributable non-performance of auxiliary persons.
2. In the event of circumstances beyond its control, Purchaser shall only be entitled to proceed with dissolving the agreement in so far as agreement cannot be implemented or when it has been established that compliance will not be possible.

## Article 12: Indemnification Purchaser

Purchaser shall indemnify Seafarma B.V. against claims of third parties to compensate loss resulting from, or related to the delivery of items and/or services and/or other activities by Seafarma B.V.. As part of its obligation to indemnify, Purchaser shall be obliged to compensate the reasonable costs of defence against claims of third parties, amongst others in respect of Seafarma B.V., unless the loss is the result of deliberate intent or wilful recklessness of Seafarma B.V. itself or of its managers.



### **Article 13: Expiry period**

All legal actions and defences of Purchaser and third parties in relation to Seafarma B.V. shall terminate after six months after the expiry of an agreed guarantee period and, if there is no guarantee period, after the end of twelve months, counted from the date of delivery of the items, performing the services or other activities.

### **Article 14: Return shipments**

1. Return shipments shall not be allowed without prior written approval of Seafarma B.V..
2. Requests to return shipments should be made by e-mail within 14 days of reception of the delivered goods.
3. If return shipments take place without permission, the costs of these return shipments shall be incurred by Purchaser. Moreover, Seafarma B.V. shall be entitled to charge administration costs and be free to store the goods at the expense and risk of Purchaser (if necessary, among third parties) and keep them at the disposal of Purchaser.
4. Return shipments without permission of Seafarma B.V. shall not discharge Purchaser in any way whatsoever from its (payment) obligations.
5. In case of the return of a shipment, Seafarma B.V. reserves the right to, in special circumstances and within the bounds of reason, not or only partially refund the price of purchase. Examples are the return of specially ordered goods or items that need to be stored in the refrigerator.

### **Article 15: Applicable law and jurisdiction**

1. All agreements and legal relationships to which these terms apply shall be governed by Dutch law, on the understanding that:
  - a. The United Nations Convention on Contracts for the International Sale of Goods (CISG) (Vienna Sales Convention) shall not apply and shall be excluded explicitly;
  - b. In so far as the retention of title implied in article 6 in these terms is more favourable for Seafarma B.V., and after the import of the items concerned in a different country than the Netherlands, this retention of title shall be governed by the law of that country to its full extent and in particular also in its full scope.



2. All disputes which arise between Seafarma B.V. and Purchaser shall be submitted to the court in Rotterdam for a decision, with the exclusion of any other court.

### **Article 16: Decisive test, change of terms, invalidity and nullity articles**

1. In the event of a difference between the Dutch text of these terms and the text of these terms stated in any other language, the Dutch text of these terms shall be decisive.

2. These terms can be changed by Seafarma B.V. unilaterally.

If an article of these terms should be or become invalid and/or be nullified, the validity of the other articles shall not be affected as a result of this. Instead of the article that has been invalidated and/or nullified, it shall be deemed that the provision has been agreed that most approaches the intention and the spirit of the article that has been invalidated and/or nullified within the scope of what is possible by operation of law.