

**GENERAL TERMS AND CONDITIONS OF SALE OF FLOODING MANAGER LLC****Article 1: General**

- 1.1 In these terms and conditions the following definitions apply:
  - a. Customer: any (legal) person who enters into an agreement with Floodingmanager LLC.
  - b. Floodingmanager: Flooding Manager LLC and its legal successor(s) (users of these general terms and conditions).
  - c. Products: all that is the subject of the legal relations to which these General Conditions apply.
- 1.2 Floodingmanager is entitled to modify these Terms and Conditions unilaterally and with the consent of the Customer with Floodingmanager's power of amendment, upon sending the revised Terms and Conditions to the Customer.

**Article 2: Applicability**

- 2.1 These terms and conditions apply to all offers, quotations, agreements, sales and deliveries of Floodingmanager.
- 2.2 Any reference to general terms and conditions other than those of Floodingmanager, is explicitly rejected by Floodingmanager.
- 2.3 Deviations from and/or additions to these general terms and conditions shall bind Floodingmanager only if agreed to in writing by the management of Floodingmanager.
- 2.4 If one (or more) provision(s) of these terms and conditions is (are) wholly or partially void or destroyed, the remaining provisions of these terms and conditions shall remain in full force and effect. The parties shall replace the void or nullified condition(s) by (a) new condition(s). These condition(s) shall be drawn up according to the purpose and purport of the condition(s) to be replaced.
- 2.5 These terms and conditions also apply to agreements where Floodingmanager engages third parties for the execution.
- 2.6 If Floodingmanager does not always require strict compliance with these terms and conditions, it does not mean that these provisions do not (no longer) apply. Floodingmanager reserves the right to require compliance with provisions of these terms and conditions.

**Article 3: Offers, quotations and cancellations**

- 3.1 All offers and quotations of Floodingmanager are without obligation, unless they contain a deadline for acceptance, in which case the offer expires after this deadline.
- 3.2 Verbal or written changes and/or additions by Floodingmanager after the offer are deemed to be a new offer, which renders the previous offer null and void.
- 3.3 If an acceptance by the Customer deviates from the offer, this constitutes a new offer by the Customer and a rejection of Floodingmanager's previous offer, even if it is only a deviation on minor points.
- 3.4 A contract is concluded as soon as the Customer's order is confirmed by Floodingmanager via Floodingmanager's website.
- 3.5 In the case of an electronic order by the Customer, the Customer agrees to the offer by placing an order.
- 3.6 The data/documents from Floodingmanager's records provide compelling evidence.
- 3.7 Any agreement reached between the parties is binding on the parties. Floodingmanager reserves the right to cancel this agreement up to and including the 7<sup>th</sup> day after its conclusion without giving reasons. In that case, the Customer is not entitled to any form of compensation.
- 3.8 Flooding Manager offers the Customer a withdrawal period of fourteen (14) days after purchase of Products and when required by law. In this case, the Customer will receive a refund of the purchase price and must return the Products in their original condition and packaging at their own expense. Products provided free of charge cannot be exchanged or redeemed for cash or credits.
- 3.9 If the Customer exercises his/her right of withdrawal, he/she must notify Floodingmanager within the withdrawal period by means of the model withdrawal form or in another unambiguous written manner (via info@floodingmanager.com, stating the name of the Customer and the order number).
- 3.10 The Customer cannot exercise his/her right of withdrawal if:
  - a. Products have been custom-made in response to the Customer's order;
  - b. Products have been used;
  - c. Products by their nature have been inseparably mixed with other goods after delivery;
  - d. The right of withdrawal has been explicitly waived by the Customer.

**Article 4: Prices**

- 4.1 All agreements are concluded in U.S. dollars or any other currency agreed upon with Floodingmanager; any exchange rate differences are at Customer's risk, unless otherwise agreed in writing.
- 4.2 The prices quoted by Floodingmanager are net prices and are exclusive of sales tax, other government levies, as well as any costs to be incurred in connection with the agreement, including shipping and handling costs, unless otherwise stated.
- 4.3 No rights can be derived from the prices stated by Floodingmanager on its website or otherwise.

- 4.4 Floodingmanager reserves the right to charge a proportional price increase to the Customer and to adjust its prices and rates, if, after the conclusion of the agreement, an unexpected increase of one or more price-determining factors and/or statutory levies occurs, or in the event of increases in the cost price. The price adjustment will be announced to the Customer, as well as the period in which the price adjustment will take effect.
- 4.5 All actual costs incurred due to the failure of the Customer to enable the execution of the agreement and/or due to circumstances that are attributable to the Customer, resulting in costs for Floodingmanager, shall be charged by Floodingmanager to the Customer.

**Article 5: Delivery**

- 5.1 Unless otherwise agreed in writing, delivery is deemed to have taken place
  - a. if the Products are collected by or on behalf of the Customer: at the moment of receipt of the Products by the Customer, or third parties acting on behalf of the Customer, e.g. the (professional) carrier engaged by the Customer;
  - b. if the Products are transported by or on behalf of Floodingmanager: at the moment of first presentation, or delivery of the Products at the home or warehouse of the Customer, or at any other address specified by the Customer.
- 5.2 Delivery of the Products shall take place Ex Works at the location appointed between the parties for that purpose, unless otherwise agreed in writing. This means that Floodingmanager will agree on a location with the Customer where the Products will be deposited. After deposition of the Products at the agreed location, the Customer is entirely responsible for the remainder of the delivery process.
- 5.3 The cost of transporting the Products with regard to delivery shall be borne by the party arranging the transport. In all other cases, these costs shall be borne by the Customer.
- 5.4 If the Customer desires a different type of transportation, the additional costs arising therefrom shall be borne by the Customer.
- 5.5 Unless otherwise agreed in writing, Floodingmanager shall be subject to a subsequent delivery period of fifteen business days, commencing on the day after the expiration of the delivery date or period.
- 5.6 Delivery times quoted by Floodingmanager are estimates only and are not guaranteed. Delay in delivery shall not constitute a material breach unless Floodingmanager fails to deliver within a reasonable time after written notice by Customer. In such event, Customer may terminate the contract or seek any remedies permitted under Florida law. Floodingmanager shall not be liable for damages resulting from delay unless such delay is the result of gross negligence or willful misconduct.
- 5.7 In determining the delivery time, Floodingmanager assumes that it can deliver the Products under the circumstances known to it at the time. If there are circumstances other than those known to Floodingmanager at the time the delivery time was set, Floodingmanager may extend the delivery time by the time it deems necessary to deliver the Products.

**Article 6: Payment.**

- 6.1 Customer is obliged to pay all invoices prior to delivery as mentioned in article 5, unless otherwise agreed in writing by Floodingmanager's management. This is a fatal deadline.
- 6.2 Payments made by the Customer always first serve to settle all interest and costs due and then to settle claims under the agreement that have been outstanding the longest, even if the Customer states that the payment relates to another claim.
- 6.3 In case of (a request for) liquidation, insolvency, bankruptcy or suspension of payments of the Customer, the claims, of whatever nature, on the Customer are immediately due and payable.
- 6.4 If the Customer fails to pay by the due date, interest will be charged from the due date at the rate of 1.5% per month (18% per year), or the maximum rate allowed under Florida law, whichever is lower. Customer is also responsible for all reasonable collection costs, including attorney's fees, incurred by Flooding Manager to enforce its rights under the Agreement. No prior notice is required before these costs become due, provided the payment terms have been clearly communicated and accepted in writing.

**Article 7: Warranty and Complaints.**

- 7.1 Floodingmanager warrants that the Products conform to the specifications stated in the offer or quotation and meet the reasonable requirements of soundness and/or usability.
- 7.2 The Product may limit and/or delay the ingress of water in the event of brief flooding. Its effectiveness depends on circumstances beyond Floodingmanager's control, such as the extent and severity of the flooding, weather conditions, the structural configuration of the premises, the method of installation, etc. Floodingmanager does not guarantee watertightness in any situation or under any circumstances.
- 7.3 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ARISING FROM

COURSE OF DEALING OR USAGE OF TRADE. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

- 7.4 Once Products or invoices are received by Customer, Customer shall check and determine that they are in all respects in order and complete, and in accordance with the order and/or agreement made.
- 7.5 Any defects and/or imperfections must be reported/complained to Floodingmanager in writing within 30 days of their discovery, accurately stating the facts to which the complaint relates. In the absence of such notification, the Customer shall be deemed to have approved and accepted the invoiced amounts and Products without reservation.
- 7.6 The right to complain, or any claim for damages and/or repair and/or replacement shall lapse, if the Customer has not complained within the aforementioned period and/or the Customer has not given Flooding Manager the opportunity to repair the defects and/or imperfections and/or the Products are not in the condition in which they were delivered.
- 7.7 The right to complain, or any claim for damages and/or repair and/or replacement shall in any case lapse if the Customer has not initiated legal proceedings within six months, after the subject of the claim is or should have been known to the Customer.
- 7.8 Slight deviations in quality, color, size, weight, finish, design and the like, considered acceptable in the trade or technically unavoidable, shall not constitute a basis for the Customer to complain.
- 7.9 If a complaint is deemed valid by Floodingmanager, Floodingmanager shall credit, repair, or replace the Products within a reasonable period of time, at Floodingmanager's discretion.
- 7.10 The right to complain also lapses if:
- the damage was caused or partly caused by negligence of the Customer or third parties, including careless use, and/or because the Customer acted contrary to the instructions, directions and advice of Floodingmanager;
  - the defect/damage is the result of normal wear and tear or of accidents or calamities, such as fire or water damage
  - the Customer has not fulfilled any obligation to Floodingmanager, even if not (directly) related to it.
- 7.11 If a complaint that does not fall under the cases mentioned in this article is considered, this is done entirely voluntarily and the Customer may not derive any rights from it.
- 7.12 Any claim against Floodingmanager, for non-conformity or otherwise, shall lapse if:
- Floodingmanager is not given the opportunity to repair the defects;
  - changes are made by Customer or on Customer's instructions, unless such changes were made with Floodingmanager's prior written advice or with Floodingmanager's prior written consent;
  - the Customer fails to meet the agreed payment obligations and/or other obligations under the agreement.

#### **Article 8: Dissolution, suspension and settlement.**

- 8.1 Floodingmanager shall be entitled to dissolve or suspend any agreement or part thereof through the intervention of a court, or to demand immediate prepayment of the total order amount, without prejudice to Floodingmanager's right to claim additional damages and whereby the Customer shall be liable for damages suffered by Floodingmanager, including interest and loss of profits, if:
- the Customer does not, does not properly or does not timely comply with any obligation, whether for payment or otherwise arising from any agreement entered into with Floodingmanager, and/or
  - in case of (filing for) suspension of payment or bankruptcy, receivership or liquidation of the company of the Customer, and/or
  - Floodingmanager has any reason to fear that the Customer will not fulfil its obligations, and/or
  - the Customer's financial position deteriorates in any way, or in Floodingmanager's judgment appears to be deteriorating, and/or
  - Floodingmanager's credit insurer and/or its intermediary downgrades the Customer's creditworthiness after the Customer places the order, and/or
  - Floodingmanager's credit insurer and/or its intermediary provides no or insufficient coverage for the total outstanding order amounts.
- 8.2 The parties may contractually agree that the powers of clause 8.1 may be exercised by Floodingmanager without court intervention.
- 8.3 The Customer has the right to terminate the sale, if Floodingmanager fails to fulfill its obligations and after the Customer has sent a written notice of default to Floodingmanager. The notice of default shall be subject to a minimum deadline of 20 business days for recovery.
- 8.4 Due to the dissolution, all (legal) claims against the Customer, which are not affected by the dissolution and/or resulting from the dissolution, are immediately due and payable.
- 8.5 The Customer is not entitled to (any form of) deduction and/or discount and/or is not authorized to (any form of) suspension and/or set-off.

#### **Article 9: Retention of title**

- 9.1 Floodingmanager reserves the right of ownership to the Products delivered and to be delivered under the agreement, until all claims Floodingmanager has or will have against the Customer, on any basis whatsoever, are paid in full and the Customer has furthermore properly fulfilled all other obligations

under the agreement(s) concluded with Floodingmanager. The Customer shall at all times cooperate in registering Floodingmanager's retention of title as a "security interest".

- 9.2 As long as the Customer has not fulfilled the obligations mentioned in the agreement and in these terms and conditions, or has not properly fulfilled its obligations, the Customer is not entitled to establish a lien or a non-possessory pledge on the Products delivered by Floodingmanager, to transfer ownership as security or to grant any other right to third parties.
- 9.3 If third parties seize the Products delivered under retention of title, or third parties wish to establish or assert rights thereon, the Customer is obliged to notify Floodingmanager immediately.
- 9.4 If the Customer fails to fulfil any obligation under the agreement relating to sold Products or work to be performed towards Floodingmanager, or is in payment difficulties, Floodingmanager shall be entitled, without notice of default, to repossess the Products delivered under retention of title, whether originally delivered or newly formed. The Customer authorizes Flooding Manager and third parties to be designated by Flooding Manager to enter all those places where these Products are located.

#### **Article 10: Force Majeure**

- 10.1 In case of force majeure on the part of Floodingmanager, the Customer is not entitled to any compensation. Force majeure includes any circumstance beyond Floodingmanager's control - even if already foreseeable at the time the agreement was concluded - that prevents Floodingmanager from fulfilling the agreement permanently or temporarily, as well as, to the extent not already included: calamities, war, threat of war, civil war, epidemics or pandemics, riots, strikes, natural disasters, stagnation in production or transport, staff absenteeism, government measures, fire and other disruptions in the business of Floodingmanager and/or its suppliers. Force majeure also applies if the circumstance preventing (further) fulfilment of the agreement occurs after Flooding Manager was to fulfil its commitment.
- 10.2 In the event of force majeure on the part of the Customer or Floodingmanager, the parties shall make arrangements as to the further execution of the agreement. If the force majeure lasts longer than two months, Floodingmanager reserves the right to terminate the agreement, without the Customer being entitled to any compensation.
- 10.3 Floodingmanager and the Customer shall make every effort to limit the consequences of any force majeure situation.

#### **Article 11: Liability**

- 11.1 The parties shall only be liable for direct damages resulting from an attributable failure to fulfill the obligations under the Agreement, or by wrongful acts or omissions of the Supplier, Customer, staff, or third parties engaged. Direct damage is exclusively understood to mean:
- a. damage to Products;
  - b. reasonable costs for determining the cause and extent of the damage, to the extent that they relate to the direct damage referred to above;
  - c. reasonable and demonstrable damage to make the faulty performance of Floodingmanager or the Customer still conform to the agreement, to the extent that these costs can be directly attributed;
  - d. reasonable costs incurred to prevent or limit damage, to the extent the costs incurred actually contributed to limiting the damage.
- 11.2 The parties will never be liable for any damage of whatever nature caused by:
- a. incorrect or incomplete data;
  - b. negligent conduct of the other party, its personnel or other persons engaged by Floodingmanager;
  - c. indirect damage. Indirect damage means: all damage that is not direct damage, including in any case, but not limited to, consequential damage, loss of income or opportunities, loss of profits and damage resulting from business stagnation.
- 11.3 If the damage is due to intent or recklessness of a party, that party shall not be entitled to invoke the limitations of liability contained in this article.

#### **Article 12: Intellectual property rights.**

- 12.1 All intellectual property rights and rights relating to the agreements entered into between the parties shall belong to Floodingmanager, to the extent they do not already belong to third parties.
- 12.2 Subject to prior written consent of the management of Floodingmanager, the Customer is not permitted to modify, reproduce, publish and/or exploit the rights referred to in the preceding paragraph independently or through the engagement of third parties.
- 12.3 The Customer guarantees that the specifications he/she provides when placing the order to Floodingmanager do not violate any rights of third parties as referred to in this article.

#### **Article 13: Transfer of rights and obligations**

- 13.1 Without the prior consent of Floodingmanager, the Customer is not permitted to transfer its rights and obligations under any heading to (a) third party(ies).

#### **Article 14: Privacy**

- 14.1 The Customer is deemed to have read and agree to Floodingmanager's privacy policy and cookie statement as stated on the website.

- 14.2 When the Customer provides personal data, the Customer grants Floodingmanager permission to use these data, for example, to fulfill obligations and deliver the expected service.
- 14.3 Floodingmanager needs personal data in order to, for example:
  - a. Process and deliver orders;
  - b. Send marketing information, such as (digital) newsletters;
  - c. Answer questions and provide information about new and/or changed Products.
- 14.4 For a detailed explanation of the privacy policy, the processing of personal data and cookies Floodingmanager refers to its website.

**Article 15: Applicable law and competent court**

- 15.1 The Vienna Sales Convention is not applicable. The same applies to any other (future) international regulation whose exclusion is permitted.
- 15.2 All agreements to which these general terms and conditions apply in whole or in part shall be governed exclusively by the laws of the State of Florida.
- 15.3 All disputes in connection with or as a result of the agreement concluded or to be concluded with Floodingmanager, shall be submitted exclusively to the competent court located in the state of Florida.