

GENERAL TERMS AND CONDITIONS OF PURCHASE OF MACCITY

Governing the sale and delivery of goods to MacCity

Article 1 - Definitions

In these general terms and conditions the following terms are used:

Day: calendar day, not being a Saturday, Sunday or holiday that is referred to in Section 3 subsection 1 of the General Extension of Time Limits Act (*Atw*);

MacCity: MacCity B.V., with its registered office at Reaal 9^E, 8305 BP Emmeloord (the Netherlands), listed in the Commercial Register of the Chamber of Commerce under number 60196106, as well as its legal successors.

In writing: in these terms and conditions, in writing means a communication sent by post, fax, or e-mail.

Vendor: the counterparty, a natural person or legal entity with which MacCity concludes a contract for the sale and delivery of goods to MacCity;

Article 2 - Applicability

1. These general terms and conditions are applicable to
 - (i) each contract of sale concluded between MacCity as purchaser on the one hand and the Vendor on the other, including acts that precede the (possible) conclusion of the contract of sale, such as talking about and making an offer;
 - (ii) any other legal relationship with respect to which the Parties agree the applicability thereof. Once the applicability of these terms and conditions has been agreed, they shall also apply by operation of law to future, similar contracts/agreements, so that their applicability will not explicitly have to be agreed again.

2. Once the applicability of these terms and conditions has been agreed, they shall also apply by operation of law to future, similar contracts/agreements, so that their applicability will not explicitly have to be agreed again, and they do not need to be handed over again.

3. The applicability of these general terms and conditions excludes the applicability of any set of general terms and conditions used by the Vendor. The applicability of these general terms and conditions does not, however, exclude the possible applicability of additional sets of general terms and conditions used by MacCity. In case of conflict between provisions in different sets of general terms and conditions, the provisions will apply which, at the discretion of MacCity, offers it the best legal position.

Article 3 - Conclusion and contents of a contract of sale

1 MacCity will not be bound by a contract for the sale and delivery of goods to MacCity until the time that MacCity has confirmed that contract by means of a written order confirmation. If confirmation from the Vendor differs on any point from the instructions given by MacCity, this must be followed by (new) written confirmation on the part of MacCity before MacCity can be deemed to have agreed to these differences.

2 Between the Parties, the confirmation sent by MacCity shall be deemed to represent the complete and correct contents of a contract concluded on its basis, in particular with respect to the (numbers of) goods to be delivered.

Article 4 - Delivery

1 Unless explicitly agreed otherwise, the goods will be delivered “Delivery Duty Paid” in accordance with the most recent version of the Incoterms to a location to be indicated by MacCity. All costs, fees and levies connected with this manner of delivery will be deemed to be included in the agreed prices.

2 The Vendor must at its own expense and to the satisfaction of MacCity adequately insure the goods to be delivered for all risks connected with the transport (including loading and unloading) of the goods to be delivered on the instructions of or for the purposes of MacCity, and keep them insured until the risk of those goods has passed to MacCity.

3 The Vendor is responsible for and shall bear the costs of obtaining all permits, licences, permissions, concessions, registrations and certificates promptly and in the correct form that might be required for the transport, storage, delivery, import, export and/or use and application of the goods to be delivered by the Vendor to MacCity.

4 Unless otherwise agreed, goods must be delivered to the location of the offices of MacCity in Emmeloord (the Netherlands), or by way of a representing party located elsewhere.

5 The Vendor must deliver the goods at the agreed time, at any rate within the agreed delivery period. If no explicit delivery period has been agreed, a period of 5 working days will apply, counting from the date of confirmation of the order by MacCity.

6 If goods have not been delivered within the applicable period, MacCity will be entitled to terminate the contract in question, without the Vendor being able to claim any compensation, and without prejudice to MacCity's right to recover the loss incurred as a result of this breach from the Vendor. If the Vendor has reasons to presume that goods will (possibly) be delivered later than agreed, it must notify MacCity to that effect immediately in writing. After receiving that notice, MacCity will also be entitled to terminate the contract in the same way as described above in this paragraph.

7 The Vendor must at all times comply with all its obligations without relying on any (alleged) right of suspension or setoff.

8 The general terms and conditions have been drafted in the Dutch and English language. The Dutch text will prevail in case of a difference between the English and Dutch version.

Article 5 - Quality

The Vendor warrants that, under all circumstances, the goods to be delivered to MacCity:

- Are completely suitable for the use ensuing from the nature of the goods, as well as for a use made known in advance by MacCity, and are free of any defects;
- Possess the properties and specification that MacCity and the Vendor agreed in advance, as well as the properties and specifications that MacCity might reasonably presume to be present;

- Are in new condition, have not been used before and were made, produced or put together with good workmanship and from new raw materials and materials of new quality, and have not been activated or registered before.
- Also as far as accessories are concerned, such as (in any case) plugs, headphones, manuals and suchlike, they are original, i.e. that they have not been replaced by products of other suppliers;
- Correspond to the serial numbers, IMEI numbers and suchlike given to MacCity in advance;
- Regarding (in any case) quantity, description, quality and properties, correspond with what was specified in advance by or on behalf of the Vendor (even if these matters were set out in offers, samples, catalogues or made known orally to MacCity), at any rate with what MacCity might expect in advance;
- Are packaged soundly, in the original company packaging with original seals, suitable to be transported by means of transport suitable for that purpose;
- Comply with all applicable sector requirements, as well as all applicable laws, guidelines, rules and regulations of the governments of both the state in which the goods were manufactured and the state for which the goods are intended;
- Are suitable to be brought onto the market by MacCity without any restrictions, both in and outside the Netherlands, worldwide.

The Vendor indemnifies MacCity for all claims, levies and damages imposed or claimed by third parties, including manufacturers and governments, in connection with import, export, use, (intellectual) property rights, tax levies and/or regulations.

Article 6 - Inspection of goods

MacCity will have the right, but not the duty, to inspect the goods or have them inspected (by x-ray among other ways) at any time, and to approve or reject them. Packages may be opened as part of that test. An inspection or test, however, that does not directly result in the discovery of a defect and/or rejection may not under

any circumstances be construed as a waiver of any right with respect to defects discovered later, even if defects are concerned that should or could have been discovered earlier during the inspection as carried out, or upon use of the item. In other words: the Vendor cannot derive any rights from the results of an inspection or test by MacCity.

Article 7 - Breaches of contract

1 If MacCity at any time discovers a breach of performance of the contract, it will notify the Vendor of this in writing, stating the reasons. Barring a substantiated refutation from the Vendor, received by MacCity within two working days after the Vendor has received the notice, the Vendor will be deemed to have accepted the breach.

2 Breach means, among other things, a departure from the warranties given by the Vendor in article 5, but also means a departure from the contract of sale with respect to the number of goods delivered and/or the agreed type(s), or any other breach under the obligation ensuing from the contract and these general terms and conditions.

3 At the time MacCity ascertains a breach, it shall at its discretion and without any demand letter or notice of default being required, have the following rights:

- It may claim compliance by the Vendor in the shortest possible time, whereby all costs connected with repair shall be borne by the Vendor or reimbursed to MacCity, including in any case additional transport costs;
- It may wholly or partially terminate the contract under which the defective good was delivered, also in relation to goods in which no defect has (yet) been discovered, without the Vendor being able to claim any compensation.
- It may also terminate other contracts already concluded with the Vendor but not yet performed, without the Vendor being able to claim any compensation, in so far as MacCity has reasonable grounds to expect that the Vendor will not be able to perform these contracts either without breaches, or if the Vendor fails to comply fully with its obligations in respect of repair, termination and/or compensation in

connection with the breach discovered. Termination will not entitle the Vendor to claim any compensation.

3 The exercise of the rights included in this article shall not affect, nor take the place of any obligation of the Vendor to compensate MacCity for the loss it incurred.

4 The discovery of a breach or the presence of a well-founded expectation of a future breach will give MacCity the right to suspend its obligations towards the Vendor until the time of full and proper compliance, also where obligations under other contracts with the Vendor are concerned.

5 The discovery of a breach as referred to in this article also means the discovery of circumstances that give MacCity a well-founded fear that the Vendor will not comply with its obligations strictly, fully and in good time.

Article 8 - Delivery 'On hold'

1. If the Parties agree that delivery will be made by way of a "Forwarder" (or: "Forwarding Agent") and/or "on hold", the following will apply, if necessary in departure from the provisions of these terms and conditions. The Forwarder will be engaged by MacCity and will perform its work only on the instructions of MacCity. If agreed after a down payment has been made, the Vendor will transport the goods or have them transported immediately to the Forwarder. The Forwarder must then inspect the goods (elementarily), in particular regarding types and quantities. The Forwarder will be entitled to conduct any and all investigation it considers desirable, even if packaging and seals need to be opened for this purpose. The Forwarder will make an inspection report of its findings, which must be made available immediately to the Vendor and MacCity.

2. Assuming that no deviations in the goods were discovered in the inspection report, in other words that they comply with the contract of sale, MacCity will see to it that the remainder of the agreed purchase price is paid. The Vendor will release the goods immediately after it has received payment in full and will notify the Forwarder and MacCity accordingly. Upon payment by MacCity, however, delivery will already have been made and the title to and risk of the goods will pass to MacCity, thus the Forwarder will be holding them for MacCity from that time.

3. If defects or deviations are discovered in the inspection report, MacCity will be entitled either (i) to require the Vendor to replace the defective goods in the shortest possible time or to add the missing goods, or (ii) to terminate the contract under which the defective or missing goods fall wholly or partially, in which case the Vendor will have to refund down payments or other payments already made within 24 hours. In both cases the Vendor shall be liable for all losses MacCity has incurred as a result of this.

Article 9 - Termination

1 In addition to the other grounds for termination agreed in these general terms and conditions and between the Parties, MacCity will be entitled to terminate every contract concluded between it and the Vendor wholly or partially, without any notice of default being required, without prejudice to its right to claim damages, and without such termination giving the Vendor any entitlement to any compensation, if:

- The Vendor is declared insolvent, suspension of payment has been applied for or pronounced with respect to him/it, a payment agreement is offered on behalf of the Vendor, or it is evident from other facts and circumstances that the Vendor is no longer able to comply with his/its obligations;
- The Vendor, if the latter is a natural person, dies or is placed under guardianship or the Vendor's assets or part thereof are placed under administration;
- The Vendor, if the latter is a legal entity, is dissolved or a resolution for dissolution of the Vendor will be or has been adopted or the Vendor enters into liquidation or a resolution for the liquidation of the Vendor will be or has been adopted;
- The Vendor merges with a third party or is acquired by a third party;
- The Vendor's legal form is changed, or;
- An essential change occurs to the Vendor's activities.
- MacCity proves to be in circumstances that see to it that MacCity cannot reasonably be required to perform the contract, for example because manufacturers, government institutions or other third parties

have notified it that the import, export, use of or trading in the goods is subject to restrictions or conditions or is not allowed at all.

2 MacCity will be entitled at any time during the term of a contract to request termination thereof. If MacCity makes such a request, the Vendor must provide MacCity forthwith, but within 48 hours at most, with a statement of the direct loss it would incur as a result of such termination, substantiated by documents. After receiving them, MacCity will:

- Confirm termination, through which it will acquire legal force, and the Vendor will acquire a claim on payment by MacCity of the previously stated loss, to be settled within 60 days afterwards, without being able to claim any other payment from MacCity, or,
- Decide not to terminate, through which the contract will remain fully in force, or,
- Confirm termination, through which it will acquire legal force, and the Vendor will acquire a claim on compensation of the direct loss incurred as a result of termination, but MacCity disputes the previously stated extent of that loss. Subsequently, the Parties will still attempt to reach agreement on this in consultation with each other. If such agreement is not reached, the Vendor will have the right to claim payment of the direct loss it incurred at law, but without being able to claim any other payment or loss, and without deriving the right from this to suspend any other obligation or set off a claim of MacCity against its claim for compensation.

3 Any termination by MacCity, on any basis, will mean that in so far as a down payment has already been made on the part of MacCity, this down payment will have to be refunded to MacCity within 24 hours after receipt of the termination statement.

Article 10 - Liability and indemnification

1 The Vendor shall be liable for all losses incurred by MacCity which are the direct or indirect result of any breach on the part of the Vendor of performance of the latter's obligations towards MacCity.

2 In case of any attributable breach by MacCity towards the Vendor, and

liability ensuing therefrom under the law (including any form of regulations and government rules and regulations), MacCity shall never owe more than the actual value of the goods delivered under the contract with respect to which the attributable breach occurred.

3 The Vendor indemnifies MacCity for any claim or legal action of a third party in connection with a breach by the Vendor, or otherwise connected with the use, sale and delivery of goods delivered by the Vendor.

4 The indemnification referred to the preceding paragraph pertains in particular to claims of third parties in connection with damage and/or loss as referred to in Book 6, Section 185 in conjunction with Book 6, Section 190 of the Netherlands Civil Code (*BW*).

Article 11 - Transfer of title and risk

1 Barring explicit agreements to the contrary, the title and risk of the goods to be delivered to MacCity will pass fully and unencumbered to MacCity at the time MacCity, or a third party it has engaged, takes delivery of those goods.

2 If it has been agreed that MacCity will pay for the goods prior to delivery, the title to the goods will pass to MacCity at the time of payment.

Article 12 - Price and payment

1 Unless otherwise agreed, the agreed price is the full price of the goods to be delivered, including all costs, levies and taxes involved, including in any case VAT and the costs of packaging, transport, insurance and delivery to the location(s) as indicated by MacCity.

2 The Vendor will send MacCity a specified invoice as soon as possible after the time of delivery, with a payment term of 60 days, unless explicitly agreed otherwise. The payment term will start to run only after receipt of a properly specified invoice, quoting in any case the reference number of MacCity. Payment cannot be construed as acknowledgement of the absence of defects or other shortcomings.

3 MacCity will be entitled to set off the amounts which are owed to the Vendor on any basis, even if those claims are not (yet) due and payable, against everything the Vendor owes to MacCity, even if those claims are not (yet) due and payable.

Article 13 - Intellectual property

The Vendor warrants that the use of the goods (including the sale to third parties, import and export and bringing onto the market) does not infringe on any intellectual property right or is otherwise free of restrictions. The Vendor indemnifies MacCity for all claims of third parties in this regard.

Article 14 - Applicable law

The contract between MacCity and the Vendor and the performance thereof shall be governed by Netherlands law. The Vienna Sales Convention is not applicable between the Parties. Disputes between MacCity and the Vendor, also including those considered to be such by only one party, which arise from or are connected with a contract to which these general terms of conditions apply shall be settled (in the first instance) by the court with jurisdiction in Zwolle.