

General Conditions

Sales

GENERAL CONDITIONS

Sales

IMPORTANT: the original Dutch text of the conditions is binding under all circumstances.
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DEFINITIONS

KPN	: KPN B.V.;
contracting party	: the party with whom KPN has entered into an agreement subject to these conditions;
agreement	: the arrangements, set out in a form or document or in another way, under which things are sold by KPN;
equipment	: the moveable property and/or system software in respect of which KPN and the contracting party have concluded an agreement.

SUBJECT

KPN shall sell the equipment referred to in the agreement to the contracting party.

INSTALLATION

Unless agreed otherwise, the contracting party shall arrange for installation of the equipment.

CONFIDENTIALITY

Neither party shall divulge to a third party any information of a confidential nature, in any form, which was obtained from the other party.

GUARANTEE

5.1 Unless otherwise indicated in the agreement, KPN shall provide a guarantee on the equipment valid for one year from the date of delivery. If, when concluding the agreement, the contracting party and KPN also enter into an installation agreement, the guarantee shall start on the date the contracting party accepts the equipment.

5.2 Unless agreed otherwise by the parties, the work covered by the guarantee shall be performed only in the Netherlands at an address specified by KPN.

5.3 a Unless agreed otherwise, the guarantee on the equipment shall cover free repair or replacement of the equipment (or parts thereof) in the event of defects in the material and/or manufacture. The guarantee shall not cover the delivery and/or replacement of non-durables.

b The parts which are replaced under guarantee shall automatically become the property of KPN.

5.4 a Unless agreed otherwise, the guarantee on the system software shall include the tracing and correction, free of charge, of errors that prevent the software from working in accordance with the technical and functional specifications agreed between the parties.

b KPN does not guarantee that the system software will function without interruption or entirely error-free or that all errors will be rectified.

5.5 The guarantee shall lapse if:

- 1** repairs, modifications or additions to the equipment are made other than by KPN and without its written consent;
- 2** the equipment has in the opinion of KPN, been neglected or incautiously and/or inexpertly used, treated and/or maintained;
- 3** type numbers and/or serial numbers and/or guarantee stickers have been damaged, removed and/or altered;
- 4** alterations have been made to the relevant guarantee certificate and/or purchase receipt;
- 5** defects have occurred because replaceable batteries have been incorrectly inserted and/or have leaked;
- 6** defects have occurred because the equipment has not been connected up and/or installed in the specified manner;
- 7** defects have occurred because the conditions in which the equipment have been kept, differ from any which may have been specified;
- 8** defects have occurred as a result of other external factors;
- 9** any seal on the equipment has been broken.

5.6 A factory guarantee on the terms and for the period specified by the manufacturer shall be provided on such equipment as may be specified by KPN.

5.7 The guarantee period shall not be extended or renewed by the performance of guarantee work, provided always that the guarantee on work carried out under the guarantee shall last for three months.

5.8 In order to claim under the guarantee, the contracting party shall produce proof of his guarantee rights (e.g. the sale agreement or a guarantee certificate) on request.

5.9 Any call-out costs may be charged to the contracting party.

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RISK AND TRANSFER OF OWNERSHIP

6.1 The risk of the destruction, loss, theft or deterioration of things shall be borne by KPN until the time of delivery and by the contracting party from the moment of delivery onwards.

6.2 KPN shall retain the ownership of the equipment until such time as the contracting party has paid all the amounts owed. Without prejudice to the provisions of article 7, paragraph 2, the contracting party may not alienate, pawn or pledge the equipment or rent or lend it to third parties or make it available to them in any other way, under any title whatsoever, before he has acquired the ownership thereof.

6.3 The contracting party shall immediately inform KPN if the equipment is seized or if ownership rights of KPN or of a third party by whom KPN has been authorised to supply system software are in danger of being damaged in some other way.

As long as the ownership of the things remains vested in KPN, KPN shall be entitled to recover the equipment from the contracting party. The costs thereof shall be borne by the contracting party if the latter bears the relevant risk. For this purpose the contracting party shall allow KPN to have access to the place where the equipment is situated.

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INTELLECTUAL PROPERTY RIGHTS, SOFTWARE

7.1 The contracting party shall obtain a non-exclusive right to use the system software and the accompanying user documentation. The right shall be non-transferable, unless the agreement provided otherwise.

7.2 The intellectual property rights to all system software and accompanying user documentation supplied by KPN to the contracting party shall remain vested in KPN or in a third party by whom KPN has been authorised to supply the system software and the accompanying user documentation to the contracting party.

7.3 The contracting party shall not be permitted to copy the system software and the accompanying user documentation supplied to him, other than for back-up purposes.

7.4 In making back-up copies the contracting party shall leave intact all signs which indicate ownership and origin.

7.5 The contracting party shall not be permitted to make the system software available in any form whatsoever to third parties.

7.6 If the contracting party wishes to transfer the things to third parties, the written consent of KPN shall be required to transfer the licence to use of the system software.

7.7 Without the written consent of KPN and of the third party by whom KPN has been authorised to supply the system software to the contracting party, the contracting party shall not be permitted to make alterations or additions (or have them made) to the system software.

7.8 KPN shall indemnify the contracting party against claims by third parties in respect of infringements of Dutch intellectual property rights.

7.9 Without prejudice to the provisions of paragraph 8, KPN shall not be liable for any damage resulting from any infringement of intellectual property rights.

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CHARGES

All charges payable by the contracting party to KPN shall be increased by the amount of any duties and levies imposed by law.

PAYMENT

9.1 Unless KPN requires payment in cash, it shall submit an invoice for all sums payable by the contracting party. Payment shall be made into the bank or giro account specified by KPN and in the way and within the period stated on the invoice. If no period is indicated on the invoice, the term of payment shall be thirty days.

9.2 If the contracting party has not made payment on time, KPN shall send a written reminder and shall set a further date for payment. If the further payment date is not met, the contracting party shall be in default without notice of default.

9.3 Before the date of delivery KPN may require the provision of security for the payment in the form of a surety, bank guarantee or deposit.

9.4 If the contracting party moves and/or changes his billing address, he shall give KPN written notice of his new permanent or temporary address or place of establishment and/or his new billing address in advance at the earliest possible date.

DELAY

10.1 If, owing to an imputable failure by KPN, the delivery of the equipment to the contracting party is delayed for more than thirty days after the date of delivery agreed between the parties, the contracting party shall be entitled to charge a penalty to KPN without notice of default and without prior recourse to the courts, unless the agreed date of acceptance by the contracting party is not exceeded in cases where KPN installs the equipment.

10.2 The penalty referred to in paragraph 1 shall be 0.1 % of the price agreed between the parties for the equipment not delivered on time or in full for each working day of delay calculated from a date thirty days after the date of delivery agreed between the parties. The penalty will be at least € 23,- with a maximum of 5% of the price of the equipment.

10.3 The penalty referred to in paragraph 2 constitutes the liquidated damages payable for delay.

10.4 Delays by one of the parties shall be immediately reported to the other party, together with a statement of the reasons and of the length of the delay.

LIABILITY

11.1 Without prejudice to the rights which the contracting party and KPN can enforce under Book 7, Title 1 of the Dutch Civil Code in the case of a consumer purchase, KPN shall not be liable for damage suffered by the contracting party as a result of imputable failure by KPN in the performance of the agreement, except in the following cases:

- a if damage imputable to KPN is caused to the equipment of the contracting party while work is being carried out, KPN shall pay compensation for repairs and replacement up to a maximum of € 453.780,- per case;
- b if death or physical injury imputable to KPN is caused while work is being carried out, KPN shall provide compensation for the consequential damage up to a maximum of € 453.780,- per case;
- c if, in the case of a consumer purchase, the contracting party suffers damage because a defect in the equipment causes damage to other property intended for private use, KPN shall pay only for the repair and replacement thereof;
- d the contracting party suffers damage because a defect in the equipment causes death or physical injury, KPN shall pay compensation for this damage only in so far as it acts as producer within the meaning of article 187 of Book 6 of the Dutch Civil Code;

The equipment shall be defective within the meaning of paragraph 1 (c), and paragraph 1 (d), if they do not provide the safety which it would be reasonable to expect, taking into account all the circumstances.

11.2 A contracting party who acts in a business or professional capacity shall indemnify KPN against claims by third parties for compensation for damage. The indemnification shall not apply to damage which must be borne by KPN pursuant to the provisions of paragraph 1.

11.3 Damage as referred to in paragraph 1 shall be reported in writing to KPN as quickly as possible, but in any case within four weeks of its occurrence. Damage which is not reported to KPN within this period shall not be eligible for compensation, unless the contracting party shows that he could not have reported the damage earlier.

RESCISSION OF THE AGREEMENT

In addition to the statutory grounds for Rescission of the agreement, each of the parties shall have the right to set aside the agreement in whole or in part with immediate effect and without recourse to a court of law or notice of default, if the other party:

- a** has applied for or been granted suspension of payment of debts;
 - b** has been declared bankrupt or has filed a bankruptcy petition.
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DOCUMENTATION

13.1 The contracting party shall be provided free of charge with a set of user documentation in a manner to be determined by KPN. User documentation does not mean technical documentation.

13.2 The contracting party shall have a licence to use the drawings for the assembly or installation of the equipment and/or the project drawings.

13.3 The contracting party shall not be allowed to duplicate the documentation and/or drawings referred to in paragraphs 1 and 2 other than for his own use.

13.4 In making copies the contracting party shall leave intact all signs which indicate ownership and origin.

13.5 The contracting party shall not be permitted to make the documentation and/or drawings referred to in paragraphs 1 and 2 available in any form whatsoever to third parties.

FINAL PROVISIONS

14.1 The agreement shall be governed by Dutch law.

14.2 All disputes which may result from the agreement shall be decided by a competent Dutch court.

