

# WINDCHALLENGE HOLLAND BV GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

## WINDCHALLENGE HOLLAND BV – VERSION NOVEMBER 2016

### 1. Definitions

- 1.1. In these General Conditions:
- a. "Agreement" means an agreement for the sale and delivery of Products by Windchallenge to Purchaser;
  - b. "Article" means an article in these General Conditions;
  - c. "Day" means any day of the week (Saturday and Sunday included);
  - d. "General Conditions" means these Windchallenge Holland BV general terms and conditions of sale and delivery;
  - e. "Guarantee Terms and Conditions" means the Windchallenge Holland BV guarantee terms and conditions;
  - f. "Purchaser" means any person, legal or natural, that has entered into or wishes to enter into an Agreement with Windchallenge;
  - g. "Products" means all products of Windchallenge, such as the Windleaf wind turbine and other products;
  - h. "Windchallenge" means Windchallenge Holland BV, having its registered office in Rotterdam, the Netherlands.

### 2. Applicability

- 2.1. The General Conditions shall apply to and be part of all existing and future Agreements between Windchallenge and Purchaser to the exclusion of all other terms and conditions. The General Conditions also apply to all pre-contractual situations between Windchallenge and Purchaser, including to any offer made by Windchallenge.
- 2.2. Purchaser's consent (either implicitly or explicitly) with the applicability of General Conditions to an Agreement, shall automatically apply to any subsequent Agreements between Windchallenge and Purchaser, unless explicitly agreed otherwise.
- 2.3. Any general conditions put forward by Purchaser and/or any oral arrangement shall not apply, are expressly repudiated and shall not be binding, unless and to the extent that they have been specifically accepted by Windchallenge in writing.
- 2.4. In the event of a contradiction between an Article of the General Conditions to this Agreement and an Article of the Agreement, the latter shall prevail.
- 2.5. In the event of a contradiction between an Article of the Guarantee Terms and Conditions and an Article of the General Conditions, the latter shall prevail.
- 2.6. In the case that one or more Article(s) in these General Conditions should be or should become fully or partially invalid, impracticable or unenforceable, the other Articles shall remain valid. The Article(s) invalid, impracticable or unenforceable shall be replaced by an appropriate provision which as far as possible corresponds to the intention of the parties to the Agreement.

### 3. Offers and orders

- 3.1. All offers of Windchallenge shall not be binding upon Windchallenge and can be revoked at any time at the sole discretion of Windchallenge, regardless of whether it includes a term for acceptance.
- 3.2. All orders are not binding on Windchallenge unless they are confirmed and accepted by Windchallenge in writing. Windchallenge is entitled to refuse an order at its sole discretion. Unless Purchaser explicitly disputes the confirmation of Windchallenge within 5 Days after receipt thereof, the order shall be binding upon the parties.

### 4. Prices

- 4.1. Unless otherwise agreed in writing, prices agreed upon or prices presented in offers shall be excluded of any additional costs, including but not limited to VAT, levies and fees of the authorities, installation costs and other costs relating to the installation of the Products, travel expenses, shipping costs and administrative costs. Unless otherwise agreed, all additional costs are for Purchaser's account.
- 4.2. If Windchallenge is confronted with an increase in its costs for whatever reason, Windchallenge will be entitled to unilaterally amend the prices and/or any other condition by written notice to cover the increase. The amended price and/or conditions shall apply to every delivery made by Windchallenge later than 30 Days after the date of such notice.
- 4.3. If Purchaser does not accept the amended price and/or conditions, it will be entitled to terminate the pending Agreements within 30 Days after receipt of such notice. After expiry of this period of 30 Days, Purchaser is deemed to have accepted the amendment.

### 5. Terms of payment

- 5.1. Payments by Purchaser shall be due within 14 Days from the date of invoice and shall in any case be due before delivery of Products. Purchaser shall be deemed to be in default without any notice being required if it fails to effect payment of the total invoice within 14 Days from the date of invoice.
- 5.2. Windchallenge is entitled to, at its sole discretion, amend the terms of payment, request payment in full in advance of delivery and/or request security for payment, at terms to be determined by Windchallenge.
- 5.3. All costs associated with payment, including banking costs, shall be for the account of Purchaser. Payments to Windchallenge shall be made without any deduction for taxes, imposts, customs, levies or any other withholding or set-off. In the event that Purchaser is under a legal obligation to make deductions for tax, the amounts due and payable by Purchaser to Windchallenge shall be increased with such an amount that following the deductions, Windchallenge receives the same amount as it would have received without the imposition of such tax.
- 5.4. Objections to the invoice by Purchaser do not suspend the terms of payment as set out in this Article 5. Purchaser is not entitled to any retention of payment, suspension of payment, set-off or other deduction, also not in the event of an (alleged) claim against Windchallenge, unless and to the extent that Windchallenge has accepted liability for such claim in writing.

- 5.5. Windchallenge shall at all times be entitled to set-off an amount equal to any monies or other liability owed by Purchaser to Windchallenge against any monies or other liability owed by Windchallenge to Purchaser.
- 5.6. If payment has not been made in accordance with this Article 5, Windchallenge is fully discharged from its obligation to deliver and/or install the Products. Windchallenge is subsequently entitled to charge interest calculated from the due date as set out in Article 5.1, without prior notice being required, at an interest rate of 5% of the total invoice per month or part of a month. Interest will be compounded on a yearly basis. This shall not prejudice Windchallenge's right to seek full compensation for damages incurred as a result of or in connection with a breach of such payment obligations in addition to any interest.

## 6. Delivery

- 6.1. In advance of any delivery of the Products, Purchaser shall inform Windchallenge in writing about the intended use of the Products to be delivered. Purchaser indemnifies and holds harmless Windchallenge from and against any claim for customs duties or other duties that are applicable to the intended use of the Products.
- 6.2. Purchaser shall co-operate with the delivery of the Products and shall take receipt of the Products as soon as the Products are presented by Windchallenge. Windchallenge shall deliver the Products at the delivery address provided by Purchaser.
- 6.3. If Purchaser refuses to take delivery, the day on which Purchaser refuses to take delivery shall constitute the day of delivery. Purchaser shall be deemed to have refused delivery if the Products have been presented for delivery but delivery has proved impossible by reasons attributable to Purchaser.
- 6.4. If Purchaser refuses delivery, the Products will be stored for the account and risk of Purchaser for a maximum of 5 Days and Windchallenge will be entitled to payment of (i) storage and handling costs and (ii) the purchase price as if delivery would have taken place. Purchaser indemnifies and holds harmless Windchallenge from any damage incurred by Windchallenge in connection with the above.
- 6.5. Windchallenge shall deliver the Products with packaging to be determined by Windchallenge in its sole discretion. If Purchaser requires different packaging, Windchallenge will be entitled to charge additional costs.
- 6.6. Windchallenge reserves the right to deploy third parties for the fulfilment of the Agreement or the performance of related activities.
- 6.7. If Windchallenge performs any additional services, including packaging, loading, transport, importing, unloading, insurance and any other services, such services shall be invoiced at the agreed rates, or if such rates have not been agreed in advance, upon at the rate customarily charged by Windchallenge for such services or at a rate equal to the actual costs Windchallenge incurs in relation to these services, whichever is higher. For the avoidance of doubt: if costs incurred by Windchallenge for additional services as referred to above exceed the agreed rates agreed, the Purchaser is nevertheless obliged to reimburse Windchallenge for the costs incurred by Windchallenge in full.

## 7. Delivery time

- 7.1. Delivery shall be made within the agreed delivery period stipulated by Windchallenge. Agreed delivery times shall be non-binding and Windchallenge shall not incur any liability in the event that such delivery time is exceeded.
- 7.2. Windchallenge is at all times entitled to suspend the agreed delivery period at its sole discretion until Purchaser has paid the total invoice within 14 Days from the date of invoice in accordance with Article 5 of these General Conditions.
- 7.3. Windchallenge is at all times entitled to deliver the Products in one or more parts. Windchallenge shall determine the size and sequence of each delivery in its sole discretion.
- 7.4. If an agreed delivery time is exceeded for a reason other than an unforeseen circumstance or force majeure (as set forth in Article 10.4 of these General Conditions), Windchallenge shall only be in default after Purchaser has served a written notice upon Windchallenge granting a period of 30 Days for delivery and delivery has not been made within this period.
- 7.5. Purchaser may terminate the Agreement by written notice to Windchallenge if a delivery time is exceeded and delivery has not been made within 30 Days after a written notice has been issued by Purchaser and received by Windchallenge. Such termination only affects orders for which Windchallenge has received notice by Purchaser in accordance with the above, and the remainder of the Agreement remains unaffected.
- 7.6. The agreed period of delivery shall be based on the circumstances as foreseen at the time of conclusion of the Agreement. In the event that delivery is prevented or delayed by unforeseen circumstances, Windchallenge shall be entitled to (i) rescind the Agreement with immediate effect without incurring any liability or (ii) an extension of the period of delivery for each day such unforeseen circumstance continues. Windchallenge shall notify Purchaser of such impediment as soon as reasonably possible.

## 8. Retention of title

- 8.1. The title to all Products delivered by Windchallenge to Purchaser shall remain with Windchallenge until full and final settlement of all amounts payable by Purchaser to Windchallenge.
- 8.2. Purchaser shall not be entitled to sell, charge or process the Products under the right of retention. Purchaser acknowledges that Windchallenge has the right to remove the Products to which Windchallenge retains title. Purchaser must provide Windchallenge with all information concerning the Products falling under Windchallenge's right of retention and must return the Products to Windchallenge upon first request of Windchallenge.
- 8.3. Purchaser must take out insurance for the Products under the right of retention against damage caused by fire, by explosion, by water and/or by theft. Upon first request by Windchallenge, Purchaser is obliged to provide Windchallenge with a copy of the insurance policy.
- 8.4. In the event of seizure of the Products under retention of title by any third party, in particular by attachment, Purchaser shall immediately disclose to such third party Windchallenge's ownership of the Products and notify Windchallenge thereof accordingly to enable Windchallenge

to assert its ownership rights. To the extent that the third party is unable to reimburse Windchallenge for the legal costs incurred by it connection with the above, Purchaser shall be liable for payment of such costs.

## **9. Inspection, complaints and warranty**

- 9.1. Upon delivery of the Products, Purchaser shall immediately and as thoroughly as possible inspect the Products. In the event of discovery of visible defects, Purchaser will notify Windchallenge in detail in writing forthwith and ultimately within 7 Days after delivery. Failure to comply with these obligations (i) shall cause the Products to be deemed in compliance with Purchaser's expectations, and (ii) will result in forfeiture of all of Purchaser's rights in this regard against Windchallenge.
- 9.2. Purchaser will be entitled to submit claims relating to defects that could not be discovered upon delivery following an immediate and thorough inspection in accordance with Article 9.1 of these General Conditions, to be demonstrated by Purchaser, within 14 Days of discovery thereof but in any case no later than within 3 months after delivery. After expiry of this limitation period, Purchaser shall not be entitled to submit any further complaints relating to any possible defects in the Products and Windchallenge shall not have any liability or obligation in relation to such complaints.
- 9.3. If a claim is justified and notified by Purchaser in writing and in accordance with Article 9.1 of these General Conditions, Windchallenge shall at its sole discretion repair or replace the defective Products or take the Products back and credit Purchaser for the purchase price.
- 9.4. If a claim is unjustified and Windchallenge has incurred expenses in relation to the unjustified claim, including but not limited to expenses for research, Windchallenge is entitled to full compensation of these costs by Purchaser.
- 9.5. Windchallenge warrants for a period of one year after delivery that the Products delivered by Windchallenge conform in all material aspects to the specifications and that the Products will be without defects, subject to normal wear and tear. Purchaser cannot transfer this warranty.
- 9.6. In addition to Windchallenge's warranty as set forth in Article 9.5 of these General Conditions, Windchallenge is entitled to offer a guarantee for the Products, subject to the Guarantee Terms and Conditions, for the duration of a guarantee period that is specified in the Agreement.
- 9.7. Notwithstanding the foregoing, Windchallenge's warranty as set forth in Article 9.5 of these General Conditions does not cover:
  - a. defects emanating from improper use or maintenance of the Product;
  - b. defects emanating from instalment and putting into use of the Products by an installer not certified by Windchallenge.
- 9.8. After expiry of the warranty period as set forth in Article 9.5 of these General Conditions, all costs for repair and/or replacement of the Products shall be charged to Purchaser.
- 9.9. Notwithstanding statutory provisions from the Dutch Civil Code, all claims of Purchaser against Windchallenge and third parties engaged by Windchallenge relating to the Products shall be subject to a limitation period of one year commencing on the date of delivery of the Products. All claims against Windchallenge shall expire after the lapse of this limitation period.

## **10. Limitation of liability and force majeure**

- 10.1. Windchallenge shall not be liable to Purchaser for any direct loss or damages caused by breach of contract, tort or otherwise.
- 10.2. The limitation of liability as set out above in Article 10.1 shall not apply in case of damages caused by gross negligence or intentional acts by Windchallenge. If the limitation of liability as set out above in Article 10.1 shall not apply, Windchallenge's liability shall in each case be limited to the amount equal to the invoice value of the purchase of the respective Products.
- 10.3. Windchallenge shall in no event be liable to Purchaser for any consequential or indirect loss or damage, such as but not limited to, loss of production, loss of revenues or profit, loss of interest, third party losses, loss resulting from interruption in the operations, costs of delays, or any damage resulting thereof.
- 10.4. Windchallenge shall not be liable for any default or delay in the performance of its obligations caused by events beyond the control of Windchallenge which prevents Windchallenge from complying with any of its obligations under the Agreement, including but not limited to the circumstance that Windchallenge is not (fully) supplied with products by its supplier.

## **11. Third party claims**

- 11.1. Purchaser shall fully indemnify Windchallenge and shall hold Windchallenge harmless from any and against any damage, liability, loss, penalty and interest accrued or incurred by Windchallenge with regard to the Products delivered to Purchaser.
- 11.2. If Windchallenge is confronted with a claim from a third party that is in any way connected with the Products delivered to Purchaser, Purchaser shall, at its own expense, (i) assist Windchallenge in the preparation of the defence against such third party, and (ii) provide Windchallenge with such information as Windchallenge deems necessary in this regard.

## **12. Termination**

- 12.1. Windchallenge may terminate any and all Agreements, wholly or partly, at any time, with immediate effect and without incurring any liability, if:
  - a. Purchaser is in breach of one or more Agreements and such breach is not cured by Purchaser within 14 Days after notification by Windchallenge;
  - b. Purchaser is declared bankrupt, is dissolved or is otherwise insolvent or is liquidated; or
  - c. Purchaser's company is transferred to a direct or indirect competitor of Windchallenge.
- 12.2. In case of termination in accordance with the above, all claims of all Windchallenge companies against Purchaser shall become immediately due. In addition, Windchallenge has the right to demand the return of the Products under retention of title.

## **13. Intellectual property**

- 13.1. All intellectual property rights in relation to the Products are vested in Windchallenge. Except as otherwise provided in the Agreement, each Party retains exclusive ownership of any intellectual property that it previously owns and provides for the purposes of the Agreement.

- 13.2. Unless explicitly agreed in writing otherwise, Windchallenge does not transfer any intellectual property rights to Purchaser.

**14. Applicable law and jurisdiction**

- 14.1. Dutch law is exclusively applicable to the entire relationship between Purchaser and Windchallenge, including these General Conditions and all offers and Agreements to which the General Conditions apply and any pre-contractual and non-contractual situations. The Vienna Convention on the International Sale of Goods is not applicable.
- 14.2. All disputes arising out of or in connection with the relationship between Purchaser and Windchallenge, including the General Conditions and all offers and Agreements to which the General Conditions apply and any pre-contractual and non-contractual disputes, shall in first instance exclusively be submitted to the competent courts in Rotterdam, the Netherlands.