ARTICLE 1. SCOPE

1. These general conditions shall apply to all offers and to all agreements to buy and sell and/or to perform work that are concluded by the private limited company Rhizopon B.V., with its registered office at Hazerswoude in the municipality of Rijnwoude and place of business at Rijndijk 263-A, 2394 CE HAZERSWOUDE RIJNDIJK, hereafter called 'Rhizopon'.

2. In these general conditions the buyer or client shall be referred to as 'the other party'.

3. Other conditions shall form part of the agreement between parties only if and insofar as explicitly agreed by both parties in writing.

4. As used in these general conditions, 'in writing' shall include correspondence by e-mail, by fax or by any other means of communication that may be deemed equivalent given the state of the art and prevailing views in society.

5. Acceptance and retention by the other party without comment of an offer or order confirmation that refers to these general conditions shall be deemed acceptance of their applicability.

6. Any inapplicability of any provision (or part thereof) of these general conditions shall leave intact the applicability of the other provisions.

ARTICLE 2. AGREEMENTS

1. Agreements shall not be binding until confirmed by Rhizopon in writing.

2. Oral agreements shall not bind Rhizopon until it has confirmed them in writing, or until such time as Rhizopon has commenced performance of the work with the consent of the other party.

3. Additions and changes to the general conditions or changes or additions to the agreement shall not be binding until confirmed by Rhizopon in writing.

ARTICLE 3. OFFERS

1. All Rhizopon offers, quotations, price lists and similar shall be without commitment unless they state a term for acceptance. If the other party accepts a quotation or offer that contains an offering without commitment, Rhizopon shall have the right to withdraw the offering up to 2 (two) working days after receipt of its acceptance.

2. Prices charged by Rhizopon and prices stated in its offers, quotations, price lists and similar shall be exclusive of VAT, shipment and any other costs. Such costs may include – but are not confined to – travel expenses and expense claims submitted by engaged
third parties. These arrangements shall apply unless explicitly otherwise agreed in writing.

3. Displayed and/or supplied samples, brochures, drawings, models, listed colours, compositions, volumes, sizes, weights, stated capacities and other descriptions shall be as accurate as possible but shall be given merely by way of indication. Unless explicitly otherwise agreed by parties in writing, no rights may be derived from such information.

4. Unless explicitly otherwise agreed by parties in writing, the samples, brochures, drawings and similar referred to in the previous clause shall remain the property of Rhizopon at all times. The items shall be returned at the first request of Rhizopon. They may not be reproduced or provided to third parties for inspection without the prior written consent of Rhizopon.

5. If the government and/or unions make changes to wages, employment conditions or social security contributions and similar between the dates of conclusion and performance of the agreement, Rhizopon shall have the right to pass on the increases to the other party. If Rhizopon and/or suppliers issue and put into effect a new price list between the aforementioned dates, Rhizopon shall have the right to charge the other party the prices stated in those lists.

**ARTICLE 4. ENGAGEMENT OF THIRD PARTIES**

If and to the extent required for proper performance of the agreement, Rhizopon shall have the right to commission third parties to perform certain activities or deliveries.

**ARTICLE 5. DELIVERY AND SUPPLY/DELIVERY TIMES**

1. Unless explicitly otherwise agreed by parties in writing, the stated times by which goods must have been delivered or work must have been performed shall never be construable as deadlines. Rhizopon must be served with written notice of breach if it fails to fulfil or to fulfil on time its obligations under the agreement.

2. If delivery or work takes place in parts, each delivery or phase shall constitute a separate transaction billable by Rhizopon per transaction.

3. The risk attached to the delivered goods or to the result of the work shall transfer to the other party at the time of delivery. Goods shall be delivered ex-truck at the stated delivery address.

4. The other party shall ensure the good accessibility of the destination or the place of unloading and shall be responsible for taking off and unloading the goods.

5. Goods shall be shipped and transported in a way determined by Rhizopon and at the expense and the risk of the other party. These arrangements shall apply unless explicitly otherwise agreed by parties in writing.

6. If it is not possible to deliver the goods to the other party or to perform the work for a reason attributable to the other party, Rhizopon reserves the right to store, at the other party’s expense and risk, the ordered goods and/or the materials procured for performance of the work. Rhizopon shall inform the other party in writing of the storage of the goods and/or obstruction of performance of the work and shall thereby state a reasonable period of time by which the other party must enable Rhizopon to resume the work and/or deliver the goods.
7. If the other party has still not fulfilled its obligations on expiry of the reasonable period of time allowed by Rhizopon within the meaning of the previous clause, the other party shall be in breach after simple expiry of one month from the date of storage of the goods or obstruction of performance of work and Rhizopon shall have the right to dissolve the agreement forthwith, fully or partly, without prior or subsequent notice of breach, without recourse to the courts and without owing compensation for damage, costs or interest.

8. The foregoing shall leave intact the obligation of the other party to pay the agreed, negotiated or owed price plus any storage and/or other costs.

9. With a view to the other party's fulfilment of its financial obligations, Rhizopon shall have the right to require prepayment or security from the other party before delivering the goods or starting performance of the work.

**ARTICLE 7. PROGRESS; PERFORMANCE OF AGREEMENT**

1. Rhizopon cannot be required to start delivering the goods or performing the work until it is in possession of all necessary information and it has received any agreed payment or instalment. If delays occur due to these matters, the stated delivery times shall be adjusted accordingly.

2. If deliveries or work cannot take place normally or uninterrupted for reasons beyond Rhizopon’s control, Rhizopon shall have the right to charge the resulting costs to the other party.

3. Unless explicitly otherwise agreed by parties in writing, all expenses incurred by Rhizopon at the other party’s request for performance of the agreement shall be fully payable by the other party.

**ARTICLE 8. DEFICIENCIES AND RETURNS**

1. The other party shall inspect supplied/delivered goods immediately after receiving them. If the other party observes visible defects, imperfections, shortcomings and/or differences in quantity, it shall state this on the waybill or accompanying note and make it known to Rhizopon immediately, or inform Rhizopon within 48 hours of their delivery and then send immediate written confirmation to Rhizopon.

2. Without prejudice to the provisions of clause 1 of this article, the other party shall inspect the quality and contents of the goods before using them, i.e. directly after opening the packaging (or wholesaler's packing materials) in which the goods were delivered. Other deficiencies – such as those not discoverable during the inspection referred to in this clause or at the start of use of the goods – shall be made known to Rhizopon by registered letter within eight days of their discovery.

3. The goods shall be deemed to have been received in good condition if the aforementioned deficiencies are not made known to Rhizopon within the stated periods of time.

4. Ordered goods shall be delivered in wholesaler’s packing materials in stock at Rhizopon. Minor deviations from stated sizes, weights, quantities, colours and similar shall not constitute a shortcoming on the part of Rhizopon.

5. Deficiencies shall not suspend the payment obligation of the other party.
6. Rhizopon shall be afforded an opportunity to investigate the complaint. Goods that must be returned for the purpose of investigation shall be sent back at the expense and risk of Rhizopon only if it has given its explicit prior consent in writing.

7. All return shipments shall occur in a way determined by Rhizopon and shall be sent back in the original packaging or packing material. Return shipments shall be sent back at the expense and risk of the other party, unless Rhizopon declares the complaint legitimate.

8. All rights of complaint shall be forfeited if after delivery the nature and/or composition of the goods underwent change or were fully or partly used, processed, damaged or repacked.

9. In the event of legitimate complaints the damage shall be settled up under the provisions of article 10.

**ARTICLE 9. LIABILITY AND WARRANTY**

1. Rhizopon shall fulfil its duty as may be expected of a company in its industry, but shall not accept any liability whatsoever for any damage - including death, bodily injury, consequential damage, loss of time, loss of profit and/or stagnation - which results from acts or omissions by Rhizopon, its personnel or its engaged third parties, except insofar as the damage was caused deliberately and/or through wilful recklessness by Rhizopon, its management and/or its managerial personnel.

2. Without prejudice to the provisions of the other clauses of this article, any kind of liability on the part of Rhizopon shall be limited to the amount of the net price of the delivered goods or performed work.

3. Without prejudice to the previous clauses of this article, Rhizopon shall never be bound to provide damage compensation that exceeds the insured amount, insofar as the damage is covered by insurance taken out by Rhizopon.

4. Rhizopon shall ensure the customary normal quality and soundness of delivered goods, with the proviso that the actual service life of goods can never be guaranteed.

5. If delivered goods exhibit visible faults, deficiencies and/or shortcomings that must have existed at the time of delivery, Rhizopon shall, at its election, repair or replace the goods free of charge. Rhizopon shall not be liable for damage arising through visible faults, deficiencies and/or shortcomings that the other party could reasonably have discovered during the inspections mentioned in article 9, clauses 1 and 2, of these general conditions and failed to report them to Rhizopon in accordance with article 9.

6. If Rhizopon obtains raw materials from third parties for the purpose of producing the goods, Rhizopon shall in respect of the behaviours and properties of those raw materials adhere to the data provided to it by the producer or supplier of the raw materials. Under the foregoing Rhizopon shall not be liable for any kind of damage arising in conjunction with the used raw materials.

7. The period within which Rhizopon may be held accountable for providing compensation for established damage shall be limited in all instances to six months from the time of establishment of the obligation to provide compensation.

8. Rhizopon shall inform the other party of any warranty attached to the delivered goods. If goods delivered or resold by Rhizopon (or parts thereof) are covered by a manufacturer's warranty, the manufacturer's warranty shall apply *mutatis mutandis* between parties.
9. The other party shall forfeit its rights in relation to Rhizopon, shall be liable for damage
and shall indemnify Rhizopon and hold it harmless against third-party claims for
compensation for damage, if and to the extent that:
a. the damage arose through the other party’s inexpert use and/or storage of the
delivered goods and/or their inexpert use and/or storage contrary to the
instructions and/or recommendations of Rhizopon;
b. the damage arose through faults, deficiencies or inaccuracies in details, materials,
raw materials, information carriers and similar that were provided to Rhizopon by or
on behalf of the other party and/or were prescribed;
c. the damage arose because the other party made changes or commissioned a third
party to make changes to the delivered goods or processed the goods.

ARTICLE 10. PAYMENT

1. Unless explicitly otherwise agreed by parties in writing, payment shall be made within
thirty days of the invoice date.
2. If an invoice has not been fully paid on expiry of the period of time referred to in clause
1:
a. the other party shall owe Rhizopon late payment interest equal to 2% per month,
calculated cumulatively over the principal sum. Parts of a month shall be considered
a full month;
b. the other party shall, after notification by Rhizopon, owe by way of out-of-court
expenses at least 15% of the amount of the principal sum and the late payment
interest, subject to an absolute minimum of €150.00;
c. Rhizopon shall have the right to charge the other party at least €20.00 in
administrative costs for each reminder, final demand and similar sent to the other
party. Rhizopon shall state this charge in the agreement and/or on the invoice.
3. At the election of Rhizopon, the agreement may be dissolved, fully or partly, in the
aforementioned or comparable circumstances, without further notice of default or
recourse to the courts, either with or without an accompanying claim for compensation.
4. If the other party has failed to fulfil its payment obligations on time, Rhizopon shall have
the right to suspend fulfilment of its obligations towards the other party to deliver goods
or to perform work until payment has been received or proper security has been
provided for payment. The same shall apply prior to default if Rhizopon has legitimate
grounds for doubting the creditworthiness of the other party.
5. Payments made by the other party shall first be used to settle all owed interest and
costs and shall then be used to settle the invoices unpaid for the longest time, unless
the other party explicitly states when making payment that the payment concerns a
later invoice.
6. If for any reason whatsoever the other party has or obtains one or more counterclaims
against Rhizopon, the other party shall waive the right to require a set-off in respect of
those claims. The waving of the right to set off claims shall also apply if the other party
applies for a (provisional) suspension of payments or is declared bankrupt.
ARTICLE 12. INTELLECTUAL PROPERTY RIGHTS

1. Rhizopon is and shall remain the owner of existing and/or future intellectual property rights that ensue from, arise during or are related to the agreement or its performance.

2. The exercise of the rights referred to in the previous clause – including disclosure or transfer of data – shall be expressly and exclusively vested in Rhizopon during and after performance of the agreement.

3. Unless explicitly otherwise agreed by parties in writing, the other party shall obtain a right of usage in respect of the aforementioned rights only after payment of the amount owed to Rhizopon under a concluded agreement.

4. Any right of usage obtained by the other party shall apply only to its own use, with the proviso that the other party shall not have the right of use for purposes other than its own, or the right of reproduction, publication or disclosure in any other way to third parties.

5. By providing data to Rhizopon, the other party attests that there shall be no infringement of intellectual property rights of third parties and that it shall indemnify Rhizopon and hold it harmless, at law and otherwise, for all resulting (and potential) consequences, financial and otherwise.

ARTICLE 13. RETENTION OF TITLE

1. Rhizopon shall retain ownership of delivered and deliverable goods until the other party has fulfilled its payment obligations towards Rhizopon. The payment obligation shall consist of paying the purchase price plus amounts owed for work performed in respect of the delivery, as well as amounts owed by way of compensation for damage due to the other party’s failure to fulfil obligations.

2. Goods covered by the retention of title may be resold by the other party only for the normal conduct of business.

3. If Rhizopon seeks recourse to retention of title, the agreement that was concluded shall be dissolved, without prejudice to the right of Rhizopon to require compensation for damage, loss of profit and interest.

4. The other party shall immediately inform Rhizopon in writing of the exercise by third parties of rights in respect of the goods subject to retention of title under this article.

ARTICLE 14. PLEDING/WARRANTAGE

Until complete fulfilment of all its payment obligations towards Rhizopon, the other party shall not have the right to give the delivered goods to third parties as security and/or to establish a non-possessory right of pledge on them, and/or to put the goods in custody under the factual control of one or more financiers (warrantage) as such action shall be treated as an imputable non-fulfilment. Without any obligation to provide notice of breach, Rhizopon may then immediately suspend fulfilment of its obligations under the agreement or dissolve the agreement, without prejudice to its right to require compensation for damage, loss of profit and interest.
ARTICLE 15. BANKRUPTCY, LACK OF POWER OF DISPOSAL AND SIMILAR

Without prejudice to provisions made in the other articles of these general conditions and in agreements concluded with Rhizopon, they may be dissolved without recourse to the courts and without notice of breach at such time as the other party is declared bankrupt, petitions for a (provisional) suspension of payments, is the subject of an enforceable seizure order, is placed in receivership or administration or loses in any other way the power of disposal or capacity to act in respect of all or some of its assets, unless the receiver or administrator recognises the liabilities as debts incurred by the general body of creditors.

ARTICLE 16. FORCE MAJEURE

1. If Rhizopon is unable to fulfil its obligations under the agreement concluded with the other party due to reasons not imputable to Rhizopon and/or to third parties or suppliers engaged for performance of the agreement, or if Rhizopon has other pressing reasons, Rhizopon shall have the right to dissolve the agreement concluded between the parties or to suspend fulfilment of its obligations towards the other party for a reasonable period of time determined by Rhizopon, without being bound to provide any form of compensation. If such a situation occurs at a time when the agreement has been partially performed, the other party shall be bound to fulfil its obligations towards Rhizopon up to that point in time.

2. Circumstances in which there shall be deemed to be non-imputable non-fulfilment shall include: war, civil commotion, mobilisation, domestic and foreign disturbances, government measures, strikes and lockouts by workers or the threat of these or similar circumstances; disturbance of exchange rates prevailing at the time of conclusion of the agreement; weather conditions, operational disruptions caused by fire, accidents or other incidents and natural phenomena, in each instance regardless of whether the non-fulfilment or late fulfilment occurs at Rhizopon, its suppliers or third parties engaged for performance of the agreement.

ARTICLE 17. DISSOLUTION, CANCELLATION AND TERMINATION

1. The other party shall waive all rights to dissolution of the agreement under article 6:265 et seq of the Netherlands Civil Code or other legal provisions mandatory legal provisions rule this out. This arrangement shall apply subject to the right to cancel or to terminate the agreement under the present article.

2. As used in these general conditions, cancellation shall mean the ending of the agreement by one of the parties before commencement of performance of the agreement.

3. As used in these general conditions, termination shall mean the ending of the agreement by one of the parties after commencement of performance of the agreement.

4. If the other party cancels or terminates the agreement, it shall owe Rhizopon a fee that Rhizopon shall determine. The other party shall reimburse Rhizopon for all costs, damage and loss of profit. Rhizopon shall have the right to set the costs, damage and loss of profit and – at its election and depending on work or deliveries already completed – to charge the other party 20 to 100% of the agreed price.
5. The other party shall be liable towards third parties for the consequences of the cancellation or termination and shall indemnify Rhizopon and hold it harmless in this respect.

6. Payments already made by the other party shall not be refunded.

ARTICLE 18: APPLICABLE LAW/FORUM

1. The agreement concluded between Rhizopon and the other party shall be governed solely by the laws of the Netherlands. Any disputes arising from the agreement shall be resolved under the laws of the Netherlands.

2. Notwithstanding the provisions of clause 1 of this article, the sale of goods law consequences of the retention of title to goods destined for export shall be governed by the legal system of the country or state of destination if that is more favourable to Rhizopon.

3. Any disputes shall be resolved by the Dutch courts that hold jurisdiction, with the proviso that Rhizopon shall have the right to submit a case to the courts at The Hague, unless the cantonal court holds jurisdiction in the case.

4. In disputes arising under an agreement concluded with another party established outside the Netherlands, Rhizopon shall have the right to act in accordance with the provisions of clause 3 of this article or – at its election – to submit the disputes to the courts with jurisdiction in the state where the other party is established.