

## **GENERAL DELIVERY AND PAYMENT TERMS AND CONDITIONS**

General Terms and Conditions of De Jong Marine Life B.V., having its registered office in Spijk (municipality of Lingewaal) at the Spijksesteeg 2a, (postcode: 4214 KG).

Version valid from 1 November 2012

### **ARTICLE 1. GENERAL**

1. For the purpose of these General Terms and Conditions De Jong Marine Life B.V. is understood as: De Jong Marine Life.
2. These General Terms and Conditions are part of any and all offers and/or proposals of and agreements with De Jong Marine Life to the extent that they do not expressly deviate from the same in writing.
3. These General Terms and Conditions are also applicable if De Jong Marine Life must rely on third parties for the implementation of agreements.
4. Unless stipulated otherwise in writing, the general or specific terms and conditions or stipulations of third parties are not accepted by De Jong Marine Life.
5. If these General Terms and Conditions and an agreement would contain mutually conflicting provisions then the agreement shall prevail.
6. If a part of these General Terms and Conditions is invalid or nullified then the remaining provisions of these General Terms and Conditions shall remain in full force and effect and the parties shall be held to make an effort to establish an alternative provision in joint consultation that is valid and best approaches the original intention of the parties.

### **ARTICLE 2. OFFERS, PROPOSALS, AND CONCLUSION OF AGREEMENTS**

1. Any and all offers and/or proposals are subject to contract, unless expressly indicated otherwise by De Jong Marine Life.
2. Agreements regarding the delivery of goods and/or the supply of services shall only have binding effect on De Jong Marine Life after written confirmation. Actual implementation by De Jong Marine Life or an invoice sent by De Jong Marine Life is put on par with a written confirmation of the offer.
3. If the correctness of the content of the said written confirmation is not disputed in writing within 8 days then De Jong Marine Life and the buyer shall be bound by the same.
4. Offers and/or proposals of De Jong Marine Life are not also automatically applicable to repeat orders.
5. De Jong Marine Life cannot be bound by its offers and proposals if the buyer should have understood that the offer and/or proposal, or a part thereof, contains an apparent error or slip of the pen.
6. Images, pricelists, folders and the like made available by De Jong Marine Life remain the property of De Jong Marine Life and cannot be copied or made available to third parties without its consent. They lack any legal effect vis-à-vis third parties and cannot be relied on by the said third parties vis-à-vis De Jong Marine Life and must on demand of De Jong Marine Life immediately be returned to the same.

7. Additions, changes and/or further arrangements are only valid if they were stipulated in writing.

### **ARTICLE 3. PRICES / PRICE INCREASE**

1. Any and all prices are, unless indicated otherwise, expressed in euros, excluding turnover tax (VAT).
2. De Jong Marine Life guarantees that price increases shall not take place after the conclusion of the agreement, unless the price increase is the result of statutory rules and/or provisions.
3. If the price increase is not the result of statutory rules and/or provisions then the buyer is entitled to terminate the agreement remotely effective from the day that the price increase takes effect.

### **ARTICLE 4. DELIVERY OF PRODUCTS**

1. Each and every delivery of sold products is deemed to take place at the location where the company of De Jong Marine Life is established. Delivery takes place, at the discretion of the buyer, through:
  - A) a transfer of the sold products from De Jong Marine Life to the buyer at the company of De Jong Marine Life;
  - B) shipment of the sold products by De Jong Marine Life;
  - C) communication by De Jong Marine Life to the buyer of the readiness of the sold products at the company of De Jong Marine Life or at a different location to be designated by De Jong Marine Life.
2. The special delivery terms and conditions of article 5 are applicable to living animals. If the provisions set forth in article 5 are at odds with other paragraphs of article 4 then the said special delivery terms and conditions are applicable.
3. If products are deliverable from stock then they are shipped immediately after the order has been placed, except in case of living animals. De Jong Marine Life may charge shipping costs for the shipment of ordered products. The delivery of ordered goods takes place at the postal address known to De Jong Marine Life, not being of a temporary nature, and is presented to the natural person present at the delivery address.
4. The buyer must sign for receipt of the products. This is only different when the buyer has grounds for rejection as permitted by law.
5. If the buyer rejects to take receipt or fails to provide information or instructions required for the delivery then the goods shall be stored at the risk and expense of the buyer.
6. The obligation to deliver of De Jong Marine Life shall, barring evidence to the contrary, be met as soon as the goods delivered by De Jong Marine Life were offered to the buyer once. In case of home delivery the report of the carrier, comprising rejection of acceptance, qualifies as full evidence of the offer to deliver, barring evidence to the contrary.
7. In case of rejection of the offered goods the return shipment and storage costs as well

as the risk of damage or loss of the rejected goods shall fully be at the expense of the buyer, unless the buyer is on proper grounds entitled to rely on rescission of the sale or replacement of the goods.

8. If delivery must take place in parts then each and every delivery shall be qualified as an individual transaction with all associated legal consequences.

#### **ARTICLE 5. SHIPPING TERMS AND CONDITIONS LIVING ANIMALS**

1. The customer must personally place a signature for receipt during the first delivery, even if a parcel is late.
2. The living animals warranty is only valid upon arrival and for products that are shipped on Monday through Thursday. The living animals warranty is not valid for animals with a '!' mentioned at the end of the code.
3. De Jong Marine Life is entitled not to ship living animals on a stipulated date due to certain weather conditions. It goes without saying that the animals shall only be packaged on the date of shipment in order to avoid stress. Should a shipment nonetheless take place in the said weather conditions at the request of the customer then the warranty expires.
4. The customer is requested to accept the parcel, even in case of damage or leakage.
5. If a shipment is rejected, for any reason whatsoever, then the customer is responsible for the full amount of the invoice.
6. Delays due to weather conditions, technical problems et cetera as a result of which a shipment is lost do not fall under the warranty policy of De Jong Marine Life.
7. De Jong Marine Life shall not be responsible for delays in the delivery by external parties. This includes (but is not limited to) weather conditions, technical problems or carelessness.

#### **ARTICLE 6. DELIVERY TIME**

1. A delivery time specified by De Jong Marine Life can never be qualified as a fatal deadline. The delivery time only takes effect after all required information is in possession of De Jong Marine Life after which De Jong Marine Life shall try to make the delivery within 30 days.
2. Within the framework of the rules regarding distance purchases De Jong Marine Life (the contractor) shall carry out orders expeditiously, however at least within 30 days. Should this not be possible (because the ordered goods are not in stock or are no longer deliverable from stock) or if there is, for any other reason, question of a delay then the consumer (the client) is informed accordingly within 1 month after having placed the order and shall in that case in any case be entitled to cancel the order without costs and without any notice of default being required.

#### **ARTICLE 7. RESCISSION**

1. Without prejudice to the rights of De Jong Marine Life by law, De Jong Marine Life is entitled to by means of a corresponding written notice suspend or rescind the

agreement either in whole or in part whilst being entitled to compensation for damages vis-à-vis the buyer if after the conclusion of the agreement facts have come to the knowledge of De Jong Marine Life that give De Jong Marine Life good reason to fear that the buyer shall not comply with its obligations or if upon the conclusion of the agreement De Jong Marine Life requested the provision of security for compliance and the said security failed to materialise or is insufficient (despite a demand) as also in case of bankruptcy of the buyer, a winding-up petition filed by the buyer, suspension of payment or a relevant application, full or partial transfer of the business of the buyer or the imposition of an attachment on a part of its assets.

2. If circumstances occur with regard to persons and/or materials that De Jong Marine Life uses or tends to use during the implementation of the agreement that are of such nature that the implementation of the agreement becomes impossible or so burdensome and/or disproportionately expensive that compliance can within reason no longer be required then De Jong Marine Life shall be authorised to rescind the agreement.
3. The buyer is entitled to rescind the agreement within a period of 7 working days without stating reasons, unless expressly stipulated otherwise, in case of goods delivered in pursuance of an order placed with De Jong Marine Life, in case of a consumer purchase, in accordance with section 5 of Book 7 of the Dutch Civil Code. The said time limit take effects at the moment that the ordered goods are delivered. If after expiry of the said time limit the buyer has not returned the goods to De Jong Marine Life then the purchase is a fact. The buyer is held, before proceeding with a return, to report this to De Jong Marine Life within the time limit of 7 working days after the delivery. The buyer must evidence that the delivered goods were returned in a timely fashion (at the latest 10 working days after delivery), e.g. by means of confirmation of delivery at the post. The return of the delivered goods is fully at the risk and expense of the buyer. Return of the goods must take place in the original packaging (complete, including accessories and relevant documentation), unused and in a new state. If the goods were used, encumbered or otherwise damaged by or at the buyer then the right to rescind as intended in the first sentence of this paragraph shall expire. In consideration of the provisions set forth in the previous sentence, after receipt and inspection of the returned goods De Jong Marine Life confirms the rescission of the purchase by return of post and sees to it that the full purchase amount (including shipping costs) is repaid to the buyer without costs within 30 days after proper receipt of the complete return shipment. The shipping costs (delivery shipping costs) are not reimbursed if the buyer returns a part of the order. In the latter instance the shipping costs are deducted from the repayable purchase amount.
4. The right to rescind, as outlined in the previous paragraph, is related to any and all delivered goods, with the exception of customised products (e.g. skimmers, filters, aquariums, sumps) and living animals that cannot be returned due to their nature. Special terms and conditions are applicable to living animals. Products that are not part of the standard stock that are ordered at the specific request of the customer fall outside the scope of the right of withdrawal.

## **ARTICLE 8. FORCE MAJEURE**

1. Force majeure is, apart from what is understood as such by law and case law, understood as any and all circumstances beyond the control of De Jong Marine Life that hinder or render the delivery of goods impossible, including but not limited to industrial action at De Jong Marine Life and/or suppliers, failures of the internet or WAP, power failures, disruptions in email traffic and failures of or changes in technology delivered by third parties.
2. Reliance on force majeure is also possible if the circumstance that hinders (further) compliance occurs after De Jong Marine Life should have already complied with the commitment.
3. If the period during which compliance with the obligation by De Jong Marine Life is not possible due to force majeure continues for more than 2 weeks then either party is authorised to rescind the agreement without in that case being liable to pay compensation for damages.
4. If upon the occurrence of force majeure De Jong Marine Life has already partly complied with its obligations, or can partly comply with its obligations, then it is entitled to invoice the already delivered and/or the deliverable part separately and the buyer is held to pay the said invoice as if it regards an individual agreement. This is, however, not applicable if the already delivered and/or deliverable part has no independent value.

## **ARTICLE 9. WARRANTY**

1. De Jong Marine Life offers different warranties for living animals and the special terms and conditions of article 10 apply.
2. De Jong Marine Life does not offer a more extensive warranty on delivered products than the warranty (conditions) of the manufacturer of the said goods, without however affecting the rights of the buyer deriving from mandatory statutory provisions.
3. De Jong Marine Life shall, however, never be responsible for the ultimate suitability of the goods for each and every individual application by the buyer or for potential advice with regard to the use or the application of the goods.
4. The buyer is held to check the delivered goods immediately upon receipt. If it becomes apparent that the delivered good is wrong, inferior or incomplete then the buyer must (before proceeding with a return to De Jong Marine Life) immediately report the said defects to De Jong Marine Life in writing. Potential defects or incorrectly delivered goods must and can be reported to De Jong Marine Life in writing at the latest up to at most 1 month after delivery. Return of the goods must take place in the original packaging (including accessories and relevant documentation) and in a new state. If goods are put into use after observation of a defect, if damages occur after observation of a defect or in case of encumbrance and/or resale after observation of a defect then the right to complain and return shall expire in full.
5. If complaints of the buyer are deemed to be justified by De Jong Marine Life then De Jong Marine Life shall, at its sole discretion, replace the delivered goods free of charge

or agree on a written settlement with the buyer regarding compensation for damages, on the condition that the liability of De Jong Marine Life and therefore the amount of the compensation shall always be limited to at most the invoice amount of the relevant goods or (at the discretion of De Jong Marine Life) at most the amount paid out, as the occasion arises, pursuant to the liability insurance of De Jong Marine Life. Each and every liability of De Jong Marine Life for any other form of damages is excluded, also including additional compensation in any form whatsoever, compensation for indirect damages or consequential damages or damages due to lost profit.

6. De Jong Marine Life shall not be liable for damages caused by intent or similar intentional recklessness of non-managerial personnel.
7. The warranty on delivered products is not applicable if:
  - A) and as long as the buyer is in default vis-à-vis De Jong Marine Life;
  - B) the buyer personally repaired and/or processed the delivered goods or had third parties repair and/or process the goods;
  - C) the delivered goods were exposed to abnormal circumstances or were otherwise handled negligently or in violation of the instructions of De Jong Marine Life and/or were handled in violation of the instructions for use mentioned on the packaging;
  - D) the inferiority is fully or partly the result of rules that official authorities impose or shall impose in respect of the nature or the quality of the applied materials.

#### **ARTICLE 10. WARRANTIES LIVING ANIMALS**

1. De Jong Marine Life does not provide any warranty with regard to living animals delivered by the same.
2. If De Jong Marine Life nonetheless receives a complaint from the buyer within 24 hours after delivery, within the meaning of article 5, of the living animals purchased by the buyer then De Jong Marine Life shall, if the buyer properly demonstrates that the alleged inferiority cannot be blamed on the buyer and can exclusively be blamed on De Jong Marine Life, proceed with redelivery of the living animals in a quantity equal to the originally delivered shipment of living animals in respect of which the buyer provides the prescribed evidence, to the satisfaction of De Jong Marine Life, or credit the buyer in connection therewith, such at the discretion of De Jong Marine Life.
3. The provisions set forth in paragraph 2 are not applicable to animals with a '!' at the end of the code.
4. Within the time limit as intended in paragraph 2 the buyer is held to send an email to [info@dejongmarinelife.nl](mailto:info@dejongmarinelife.nl). In the said email the buyer specifies its full name, order number and the name of the living animals. A clear photo must be sent in attachment to the email.
5. If delivery took place in the manner as intended in article 5 of these General Terms and Conditions then the period to complain of 24 hours takes effect at the moment that the living animals were actually received by the buyer however De Jong Marine Life does not accept or process a single complaint if the performance of the transport, regardless of the fact as to whether this takes place by car, boot, train or airplane, is delayed by any cause whatsoever, not even if the relevant complaint of the buyer is received by De

Jong Marine Life within 24 hours after the buyer has received the living animals.

#### **ARTICLE 11. PAYMENT**

1. Unless stipulated otherwise, payment must take place via iDeal, by bank or in cash at the place of delivery of the products. Payment in instalments is not possible.
2. After the expiry of 14 days after the date of the invoice the buyer is in default by operation of law and effective from the said moment liable to pay an interest rate of 1% per month on the exigible amount, unless the statutory interest is higher in which case the statutory interest applies, in the course of which a part of a month is qualified as a full month.
3. In case of bankruptcy or suspension of payment of the buyer or a relevant petition or application the claims of De Jong Marine Life and the obligations of the buyer vis-à-vis De Jong Marine Life immediately fall due.
4. If De Jong Marine Life must outsource its claim for collection then the buyer is held to pay a fixed amount of 15% of the payable amount on account of extrajudicial collection costs, with a minimum of € 40.00 or whatever is common in the Dutch collection practice.
5. If De Jong Marine Life can demonstrate to have incurred higher expenses, which were within reason required, then the said expenses shall also qualify for reimbursement.

#### **ARTICLE 12. RESERVATION OF TITLE**

1. The title of any and all goods sold and delivered to the buyer by De Jong Marine Life shall remain vested in De Jong Marine Life as long as the buyer has not complied with the claims of De Jong Marine Life on account of the agreement or earlier or later similar agreements, as long as the buyer has not paid the performed and still to be performed activities on account of this agreement or similar agreements and as long as the buyer has not paid due to a failure to comply with the said obligations, including claims regarding penalties, interest and costs, all within the meaning of section 92 of Book 3 of the Dutch Civil Code.
2. The goods delivered by De Jong Marine Life that fall under the reservation of title can only be resold within the framework of the normal business operations of the buyer and can never be used as an instrument of payment.
3. The buyer is not authorised to pledge goods that are subject to the reservation of title or to otherwise encumber the same.
4. As the occasion arises the buyer hereby already gives De Jong Marine Life or a third party to be designated by De Jong Marine Life unconditional and irrevocable consent to, in all instances where De Jong Marine Life intends to exercise its ownership rights, enter all the locations where its properties shall then be located and to take possession of the said goods there.
5. If third parties impose an attachment on the goods delivered subject to reservation of title or intend to establish or enforce rights in respect of the same then the buyer is held to inform De Jong Marine Life accordingly as soon as within reason can be expected.

6. The buyer commits to take out and maintain insurance against fire, explosion and water damage for the goods delivered subject to reservation of title and to on demand provide De Jong Marine Life insight into the policy of the said insurance.

#### **ARTICLE 13. INTELLECTUAL PROPERTY RIGHTS**

1. Unless expressly stipulated otherwise in writing, the full copyrights and all other intellectual and industrial property rights with regard to the products delivered or the services supplied by De Jong Marine Life are vested in De Jong Marine Life and/or its suppliers.
2. The parties commit to take sufficient measures in order to ensure confidentiality with regard to their reciprocal data of a confidential nature of which they take note during the implementation of the agreement.

#### **ARTICLE 14. COMPLAINTS**

1. In case of questions and/or complaints the buyer can call De Jong Marine Life on number +31 (0)183 563 332, available from Monday through Thursday from 08:00 o'clock to 16:00 o'clock and on Friday from 08:00 o'clock to 15:00 o'clock.
2. Complaints are usually handled within 30 days. Should this, for any reason whatsoever, not be possible then the buyer is informed of the duration of the delay.

#### **ARTICLE 15. APPLICABLE LAW AND DISPUTES**

1. Dutch law is exclusively applicable to any and all proposals of and agreements with De Jong Marine Life, also if a commitment is fully or partly performed abroad or if the party involved in the legal relationship is established or resides there. The applicability of the Vienna Sales Convention is expressly excluded.
2. The parties shall only rely on the court after they have made every effort to settle a dispute in joint consultation.

#### **ARTICLE 16. SOURCE AND CHANGE OF GENERAL TERMS AND CONDITIONS**

1. These General Terms and Conditions were filed with the Chamber of Commerce.
2. The lastly filed version and/or the version applicable at the time of conclusion of the agreement with the buyer always applies.
3. The Dutch text of the General Terms and Conditions is always decisive for the interpretation of the same.

Filed: [stamp Chamber of Commerce for the  
Central Netherlands]

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