



A Choice for Quality

General Terms and Conditions

AV001701L

www.Lumekra.com
contact@lumekra.com



A Choice for Quality

Lumekra B.V.
Dorpstraat 40 | 6373 JD | Landgraaf | The Netherlands

Foto : Julien Belli

Index:

Article 1	Definitions
Article 2	General
Article 3	Offers, proposals and conclusion of an agreement
Article 4	Term, execution terms, execution, installation
Article 5	Force Majeure
Article 6	Guarantee
Article 7	Inspection, control and repair
Article 8	Liability of Lumekra
Article 9	Payment and collection costs
Article 10	Early termination and termination of the Agreement
Article 11	Intellectual Property Rights
Article 12	Law and jurisdiction, Amendments

Article 1 - Definitions

- | | | | |
|------|-----------|---|---|
| 1.1 | Lumekra | : | the private company with limited liability established under the laws of The Netherlands, with statutory seat in Landgraaf (The Netherlands) and office address at Landgraaf (The Netherlands) and/or its successors; |
| 1.2. | Client | : | Lumekra's counterparty: any person or any legal entity who enters into an agreement with Lumekra; |
| 1.3. | Offer | : | an offer which upon acceptance thereof will lead to an agreement; |
| 1.4. | Agreement | : | the Agreement including all Annexes between Lumekra and the Client in which the Object is/are ordered and/or provided to the Client; |
| 1.4. | Term | : | the term of the Agreement as mentioned therein; |
| 1.5. | Services | : | all services to be provided to the Client by Lumekra and/or third parties; |
| 1.6. | Object | : | all goods and/or Services to be provided to the Client by Lumekra and/or third parties; |

Article 2 - General

- 2.1. These conditions apply on every offer, proposal and agreement between Lumekra and the Client, unless both parties agreed in writing to comply differently.
- 2.2. These conditions are also applicable on every agreement between Lumekra and the Client, which agreement will be executed by third parties by order of Lumekra.
- 2.3. The applicability of General Purchase Conditions and/or other General Conditions of the Client is hereby explicitly and fully rejected.
- 2.4. If, at any time, any provision of these conditions is or becomes illegal, invalid or unenforceable in any respect under any law or any jurisdiction (or any provision is omitted), neither the

legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law or any other jurisdiction will in any way be affected or impaired and the relevant provision shall be replaced (or the omission shall be rectified) by incorporation of a provision which

- (a) best achieves the commercial effect that the parties hereto intended thereby and
- (b) shall be legal, valid and enforceable under the laws of the relevant jurisdiction.

- 2.5. In case there's any uncertainty subject to the meaning or interpretation of any clause of these conditions, that clause has to be interpreted accordingly its spirit.
- 2.6. In the event a situation arises amongst the parties, which situation is not sorted in these conditions, it needs to be handled and interpreted accordingly the spirit of these conditions.
- 2.7. The Client can not vest cq. will not constitute any right(s) in the event Lumekra is not acting in accordance with these conditions nor shall Lumekra loose its right(s) subject to the applicability of these conditions.

Article 3 - Offers, proposals and conclusion of an agreement

- 3.1. All offers and proposals are subject to contract and noncommittal unless a time of a fixed period for acceptance is stated therein. In all the other circumstances, there is no right to be vested by the Client subject to the contents of any offer and/or proposal in case to product referred therein is not longer available.
- 3.2. The Client can not constitute any right(s) subject to the offer and/or proposal in case of a manifest clerical error and/or an obvious error or mistake.
- 3.3. All prices mentioned in any offer and/or proposal are VAT excluded and also excluding all other taxes, duties, surcharges, collections as levied or to be levied by the government and authorities, unless agreed upon differently.
- 3.4. Lumekra has the right to increase the agreed fee and/or price for the Object in the event VAT regulations and/or all other taxes, duties, surcharges, collections as levied or to be levied by the government and authorities have changed.
- 3.5. Lumekra is not obliged to execute any part of the assignment (against a partial payment of the agreed amount in total) in any composite offer and or proposal. Offers and or proposals do not apply for future offers, proposals or transactions.
- 3.6. An Agreement is concluded once Lumekra received a confirmation in writing by the Client, an e-mail in which the order is placed and/or Lumekra confirmed an order of the Client in writing.

Article 4 - Term, execution terms, execution, installation

- 4.1. The Agreement between Lumekra and the Client can be entered into for the fixed term as described in the Agreement.
- 4.2. In case the Agreement states a term for the execution of activities or deliveries of objects, that

term is never to be considered fatal. In the event Lumekra exceeds a term, the Client is obliged to give Lumekra a notice of default in writing and to grant Lumekra a reasonable term to fulfil its obligations towards the Client. The Client is however not entitled to any compensation when Lumekra has exceeded any term.

- 4.3. Lumekra will execute the Agreement to the best of one's knowledge and in accordance with high standards.
- 4.4. Lumekra is entitled to instruct third parties to execute certain activities. The applicability of clauses 7:404, 7:407 section 2 and 7:409 of the Dutch Civil Code is expressly excluded.
- 4.5. The Client will facilitate, at its own expense, employees of Lumekra or its third parties in case those employees have to execute activities at the site of the Client or any site the Client has appointed.
- 4.6. All costs of the installation of the Object are to be beard by the Client. Additional costs as a result of extraordinary circumstances or wishes from the Client will be charged to the Client.
- 4.7. The Client is obliged to make the necessary structural, constructional and/or architectural preparations prior to the deliverance and/or installation of the Object by or on behalf of Lumekra. All costs subject to the needed structural, constructional and/or architectural preparations are to be beard by the Client.
- 4.8. All deliveries under the Agreement and/or the Object remain subject to retention of title by Lumekra. The Client only receives ownership of the Object and/or the deliveries upon full payment of the outstanding balance(s).

Article 5 - Force Majeure

Lumekra shall not be liable for failure to perform or delay in performing any obligation under the Agreement if the failure or delay is caused by any circumstances beyond its reasonable control, including but not limited to acts of god, war, civil commotion or industrial dispute.

If such delay or failure continues for at least 60 days, both parties shall be entitled to terminate the Agreement by notice in writing to the other, without being liable towards the other party.

Article 6 - Guarantee

- 6.1. The Client warrants to have received the Object in good condition.
- 6.2. The Client is bound to use and maintain the Object with due, proper care and diligence, in accordance with all given oral and written instructions and/or manuals.
- 6.3. Lumekra warrants the quality and reliability of the Object. In the event the quality and/or reliability is not accordingly the standards held by Lumekra, Lumekra is obliged -- at its sole discretion -- to remedy the defect(s) by repairing it, to replace it or to provide the Client with a discount on the purchase price. The term of the guarantee equals the term of the guarantee provided by the manufacturer of the Object, unless expressly otherwise agreed upon in writing.

- 6.4 No fees of labour and/or (de)installation and/or (de)fitting are included in this guarantee clause.
- 6.5 The guarantee is based upon the total amount of years/hours at normal usage, in an environmental temperature of 25 degrees Celsius and with a minimum of 10 mm intermediate space around the centre of the Object(s). At normal usage has the following meaning:
- a. the Object(s) is/are used in an environment in which the temperature never drops below minus 20 degrees Celsius (- 30 degrees Celsius for LED tubes) and is never higher than + 30 degrees Celsius (+ 45 degrees Celsius for LED tubes), and
 - b. the relative air humidity value of 80%, or the IP-value of the Object(s), will not exceed the humidity value of the installation, and
 - c. the operating circumstances do not differ from the information on the packaging material of the Object(s), and
 - d. the parts of the Object(s) are not moved, replaced or removed and the Object(s) is/are used inside an open armature (LED tubes in a closed armature), and
 - e. voltage fluctuations in the installation are not higher than 10%, and
 - f. the Object(s) is/are not switched on and off more than 50.000 times "30 seconds on and 30 seconds off", and
 - g. the Object(s) are not in use during more than, in average, 10 hours per day.
- 6.6 Lumekra does not provide any guarantee on software and/or software products whatsoever.
- 6.7 Lumekra is not liable towards the Client for all damages as a result of vandalism, weathering and/or all other externally causes.

Article 7 - Inspection, control and repair

- 7.1 The Object is to be delivered under Ex Works, Incoterms -- most recent version unless otherwise agreed upon in writing.
- 7.2 Lumekra will inform the Client subject to the readiness of the (sub)agreement. At that specific moment, the Client is obliged to pay -- without any compensation and/or discount -- the outstanding balance of the Agreement and, furthermore, to take possession of the Object within 7 days, unless otherwise agreed upon in writing.
- 7.3 Upon deliverance the Client will immediately inform Lumekra of any failure, breakdown, damage or malfunctioning of the Object. If the Client is in breach of this information obligation, Lumekra is not liable towards the Client for all damages, losses and costs of repair the Client suffers and will suffer.
- 7.4 The Client has no right whatsoever to repair the Object nor to have it repaired by others than Lumekra or third parties assigned by Lumekra, unless prior written consent from Lumekra.
- 7.5 All costs of repair executed by Lumekra will be paid by Lumekra.

- 7.6 All costs of repair of the Object caused by any misuse, negligence, default, f.i. unusual wear and tear, improper use of the Object, will be charged to the Client.

Article 8 - Liability of Lumekra

- 8.1. In case of liability, Lumekra's liability is always limited as described in this clause.
- 8.2. Lumekra is not liable for damages, whatsoever, caused by received wrongly and/or incomplete data from the Client and executed by Lumekra.
- 8.3. Lumekra's liability subject to product liability is always limited to (maximum) the invoiced value of the Object. Lumekra is only liable for shortage and/or defects of the Object delivered to the Client.
- 8.4. In any case Lumekra's liability is limited to the amount which will be paid out by Lumekra's insurance company.
- 8.5. Lumekra can never be held liable nor is liable for indirect damages, whatsoever, including losses of profit, losses of turn over, consequential costs, lost savings and loss due to business interruption.

Article 9 - Payment and collection costs

- 9.1. Payment is due and to be executed by direct debit or, in case of an invoice, within eight days after the date of the invoice. The Client will respect and follow all payment instructions as stated on the invoice (f.i. the method of payment, currency). Lumekra is entitled to invoice incremental.
- 9.2. The Client is in default of payment when the payment has not been received by Lumekra within the contractual payment term. As from the moment the Client is in default of payment the Client owes Lumekra 1% interest per month (unless the statutory interest rate is higher, in which event the statutory interest applies) as long as the required payment has not been received.
- 9.3. Lumekra is entitled to deduct payments firstly from all collection costs, then from the accrued and due interest and finally from the balance.
- 9.4. The Client is not entitled to compensate a payment(obligation).
- 9.5. Complaints subject to the invoice(d balance) will not suspend any payment obligation.
- 9.6. In case an obligation to pay is overdue, the Client is obliged to pay all reasonable extrajudicial collection costs to Lumekra. Those collection costs will be calculated accordingly to the common standards in the Dutch collection practice. In the event Lumekra has suffered from higher collection costs, then those costs have to be paid by the Client too. Eventually made judicial and execution costs will be beard by the Client. The Client owes interest over the collection costs to Lumekra.

Article 10 - Early termination and termination of the Agreement

- 10.1. Notwithstanding Lumekra's right to claim damages, Lumekra is entitled to terminate and/or to cancel the Agreement directly without court intervention by single written statement to the Client in the following circumstances:
- a. if the Client is in default subject to any of its obligations under the Agreement or any agreement(s) related to the Agreement;
 - b. if the Client has decided to terminate, dissolve, liquidate with or without an expressive resolution the company, and/or total or partial cessation of its company, sell or lease of the companies' assets and/or the Client loses its legal capacity;
 - c. if the Client loses or deprives any necessary authority, competence, license, registration to exploit its business and/or the Client is acting in breach with any governmental law, sub law or regulation subject to the business;
 - d. if the Client applied for a moratorium, debt rescheduling, debt adjustment, filed a petition for bankruptcy or a third party instituted bankruptcy proceedings against the Client or its business. The circumstances mentioned under 'd' do also apply for the Client as well as its partners and associates;
 - e. if the Client proposes a composition or settlement and/or declares to adjust no rights against the liquidation assets;
 - f. if the Client is confronted with an executory seizure or a prejudgment seizure on assets which are considered by Lumekra as essential, which seizure(s) has/have not been withdrawn within 30 days after the day it/they has/have been levied;
 - g. if the Client merges or enters into a community of interests with third parties or when the Client undertakes a change of control (by share transfer or otherwise) and/or its Memorandum of Articles of Association has been changed and/or the legal capacity of one of the partners participating in a commercial partnership has changed;
 - h. if the Client provided Lumekra before concluding the Agreement with incorrect and/or incomplete information which information is of substantial importance for Lumekra.
- 10.2. The Client is obliged to inform Lumekra immediately when one or more of the circumstances as mentioned in article 10.1. are about to change or have changed.
- 10.3. In case Lumekra has terminated or cancelled the Agreement based on the contents of this clause 10., the Client is no longer entitled to use the Object and the Client has the duty to make the Object available to Lumekra immediately.

Article 11 - Intellectual Property Rights

- 11.1. Lumekra reserves all its rights subject to intellectual property rights. Unless it concerns confidential information which is not to be distributed to third parties, Lumekra has the right to exploit all information arisen at its own side during the fulfilment of the Agreement for other purposes.

- 11.2. All legal and beneficial rights, title and interests, including contingent and future rights (in each case whether registered or unregistered) and all claim to or application for intellectual property rights and renewals, extensions or revivals of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world owned, used, enjoyed, exploited by or held for use in, or predominantly in connection with Lumekra and not limited to copyright, trade marks, service marks, trade names, and domain names, rights in goodwill or to sue for passing off, unfair competition rights, design rights, patents, semiconductor topography rights, know-how, trade secrets, inventions, get-up, database rights and other forms of intellectual or industrial property as well as all trade mark(s) that have been or may in the future be registered, remain the sole and undisputed property of Lumekra.

Article 12 - Law and jurisdiction, Amendments

- 12.1. The Agreement, its Annexes and these General Conditions shall be exclusively governed by Dutch law and any dispute regarding the interpretation and/or execution of any of its provisions shall be submitted exclusively to the District Court of Maastricht (The Netherlands) having competence to hear and decide on the matter.
- 12.2. Both parties will firstly try to settle their disputes to the fullest before entering into legal proceedings.
- 12.3. These General Conditions may be amended, superseded, cancelled, renewed or extended upon acceptance in writing by both parties. In case Lumekra amends these General Conditions, those amendments will enter into force after 3 months the Client has been informed in writing by Lumekra of the changes and amendments.

General Terms and Conditions, September 2016

