

# TERMS AND CONDITIONS OF DELIVERY AND CONTRACTING 2022



KINGSPAN LIGHT + AIR NL B.V. / KINGSPAN LIGHT + AIR PRODUCTION NL B.V.

COLT INTERNATIONAL BV / COLT INTERNATIONAL PRODUCTION BV / COLT INTERNATIONAL BEHEER BV

Effective date: 5 October 2022

## Table of Contents

<b>Clause 1.</b>	<b>Definitions</b>
<b>Clause 2.</b>	<b>Applicability</b>
<b>Clause 3.</b>	<b>Offers and agreement</b>
<b>Clause 4.</b>	<b>Scope of the work</b>
<b>Clause 5.</b>	<b>Contract variations</b>
<b>Clause 6.</b>	<b>Delivery</b>
<b>Clause 7.</b>	<b>Delivery on demand</b>
<b>Clause 8.</b>	<b>Completion</b>
<b>Clause 9.</b>	<b>Packaging</b>
<b>Clause 10.</b>	<b>Prices</b>
<b>Clause 11.</b>	<b>Payment</b>
<b>Clause 12.</b>	<b>Inspection and complaints</b>
<b>Clause 13.</b>	<b>Warranties</b>
<b>Clause 14.</b>	<b>Attributable failure and dissolution</b>
<b>Clause 15.</b>	<b>Non-attributable failure (force majeure)</b>
<b>Clause 16.</b>	<b>Liability and indemnity</b>
<b>Clause 17.</b>	<b>Retention of title</b>
<b>Clause 18.</b>	<b>Right of retention</b>
<b>Clause 19.</b>	<b>Intellectual property</b>
<b>Clause 20.</b>	<b>Confidentiality</b>
<b>Clause 21.</b>	<b>Strict liability on the part of the Customer</b>
<b>Clause 22.</b>	<b>Assignment of rights and obligations</b>
<b>Clause 23.</b>	<b>Applicable law and disputes</b>
<b>Clause 24.</b>	<b>Other conditions</b>

## **Clause 1. Definitions**

1.1 In these terms and conditions (referred to hereinafter as “Terms and Conditions”) the terms listed below have the following meanings:

- **Kingspan**: the private limited liability company

Kingspan Light + Air NL BV,  
Kingspan Light + Air Production NL B.V.  
COLT International B.V.  
COLT International Productie B.V.  
COLT International Beheer B.V.

- **Customer**: each natural person or legal entity with whom Kingspan enters into an agreement or with whom Kingspan is in negotiation with regard to entering in such an agreement regarding the delivery of a performance by Kingspan;

- **General Terms and Conditions**: these general terms and conditions of sale, delivery and contracting;

- **Services**: the services to be provided and/or the work to be performed by on behalf of the Contractor under the Agreement;

- **Goods**: the goods to be delivered by the Contractor under the Agreement;

- **Agreement**: the agreement concluded between Kingspan and the Contractor regarding the delivery of goods and/or the performance of work and/or services.

- **Parties**: Kingspan and the Customer jointly;

1.2 Unless provided otherwise in these General Terms and Conditions or in the Agreement.

(i) “written” or “in writing” is also taken to mean electronic data traffic, such as messaging by e-mail and; (ii) words in the singular also refer to the plural and vice versa.

1.3 These General Terms and Conditions are an integral part of the Agreement. In the event of a conflict between the provisions of these General Terms and Conditions and the provisions of the Agreement (without the General Terms and Conditions), the provisions of the Agreement will prevail.

## **Clause 2. Applicability**

2.1 These Terms and Conditions apply to all notifications and offers by Kingspan and all agreements and ensuing engagements with Kingspan regarding the delivery of a performance by Kingspan.

2.2 In the event that the English translation of these Terms and Conditions is used and its use leads to a lack of clarity about the interpretation of the translation, the interpretation of the corresponding provisions in the original Dutch version of these Terms and Conditions will be the determinative factor in the context of that interpretation.

2.3 The applicability of any general or specific terms and conditions or other stipulations used by the Customer or any other third party is expressly rejected by Kingspan.

2.4 Deviations from these Terms and Conditions and/or any offer or agreement may be effected only in writing by the persons authorised to do so, and such deviations will apply only with regard to the specific agreement to which they pertain. Any deviation from Kingspan’s offer must be confirmed in writing by Kingspan before it will apply in respect of Kingspan. In deviation from the provisions of Article 6:225(2) of the Dutch Civil Code, Kingspan will not be bound by any deviations from Kingspan’s offer in the Customer’s acceptance.

## **Clause 3. Offers and agreement**

3.1 Offers by Kingspan must be considered as a whole and are valid for 30 days after the date of the offer, or as much longer or shorter as stated in the offer, and are always made free of obligation. Kingspan may revoke offers within ten business days after receipt of the Customer’s acceptance of an offer made by Kingspan.

3.2 All information and details included in offers, letters, catalogues, drawings, etc. issued by Kingspan, such as measurements, colours, designs, weight, power, quantities and \*\*accurate thickness, are as accurate as possible and are binding only in so far as their binding nature is expressly stated. However, Kingspan cannot guarantee that there will be no deviations from such information and details.

3.3 Offers are based on the details provided by the Customer. The Customer will be liable for any additional costs, price increases, delays in completion or delivery, and other consequences of changes and/or mistakes in and/or deviations from these details.

3.4 An agreement between Kingspan and the Customer comes into effect by dispatch of a written order confirmation by Kingspan to the Customer or – if earlier – as soon as Kingspan commences the performance of the agreement for the benefit of the Customer. If Kingspan sends an order confirmation, the order confirmation is expected to be an accurate and complete representation of the substance of the agreement. The Customer is expected to have carefully examined the content of the contract documents. The Customer will be charged separately for any deviation not set out in the Agreement. If the Customer as contractor of the work acts on the instruction of a principal, Kingspan will never be bound by back-to-back provisions, unless these are included verbatim in the Agreement accepted by Kingspan. A simple reference in general provisions or appendices will not be sufficient in this respect.

#### **Clause 4. Scope of the work**

4.1 The agreement concerns the performance of the work and/or the provision of products or services, as described in the order confirmation or, in its absence, in the offer (possibly amended in accordance with Clause 2.4, above). To the extent applicable, the agreement will be performed on the basis of the working drawings, including the dimensions included therein, checked and approved by the Customer. The provision of as-built drawings is not part of the agreement, unless otherwise agreed in writing.

4.2 If expressly stated in the agreement and included in the pricing, the agreement also concerns the training or instruction regarding the operation of any systems or products delivered by Kingspan to the Customer, to be provided by Kingspan to the Customer or its staff to be charged with such operation. Kingspan will determine the extent and duration of the training or instruction. Clause 13.5 applies.

4.3 The Customer is responsible for arranging, and will bear the costs of, the following:

- a. roofing and/or other structural work;
- b. assistance with moving, removing or installing things that cannot reasonably be handled by two people;
- c. the horizontal and vertical transport of men and equipment to the location designated by Kingspan;
- d. the provision, placement and, following completion of the work, removal of scaffolding, framework and ladders;
- e. the energy, water and gas supply required for the performance of the work, and the application for, timely acquisition of and maintenance of the required permits;
- f. the provision of waste containers;
- g. the provision of safety precautions, such as roof edge protection, safety nets or crash decks and the like, if required by any relevant laws or regulations, or if necessary in Kingspan's opinion.
- h. the provision of a dry, heated, lighted and separately lockable space of sufficient size, with electricity and internet connections, during and in the immediate vicinity of the work to be performed, as accommodation for Kingspan's personnel and for the storage of materials and products it supplies, all to Kingspan's satisfaction;
- i. proper insurance regarding the items referred to above at h.;
- j. taking the decisions that fall within the scope of the Customer's responsibilities in the context of the progress of the performance of the agreement at such time as to ensure the unhindered progress of the performance of the agreement;
- k. the timely, complete and accurate provision to Kingspan of all information that is relevant to or may affect Kingspan's performance of the agreement, both before and during that performance. The Customer guarantees the accuracy and completeness of the information and specifications provided by or on behalf of the Customer in this context.
- l. full compliance with Kingspan's anti-bribery and corruption policy as directly available in the publication "Code of Conduct Integrity, Honesty, Compliance" on the website: [www.kingspan.com](http://www.kingspan.com)

4.4 If, despite the precautions referred to in paragraph 3, Kingspan is nevertheless held liable for a violation of the law or regulations ensuing therefrom, the Customer will be obliged to indemnify Kingspan against any resulting costs, expressly including costs resulting from sanctions and/or orders imposed by (for example, but not limited to) the Netherlands Labour Authority and other authorities.

4.5 For the performance of assembly work by Kingspan, the Customer will arrange the following:

- the timely completion of watertight connections to rigid and flat upstands;
- the presence of walkways or similar features on the roofing and the timely, accurate supply of fastenings such as anchor rails, threaded bushes and inserts, as well as adjusting laths and other features necessary for the assembly, in accordance with the specifications and/or drawings and all legal and structural requirements.

4.6 Assembly work will be performed on the basis of drawings and calculations checked and approved by the Customer. The Customer will bear the risk associated with changes made to those drawings and calculations by the Customer after approval, without prejudice to the provisions of paragraph 9.

4.7 The Customer will ensure that Kingspan can perform the work it is to perform unhindered at the agreed, or the desired and/or indicated times. This means, among other things, that the access roads to the construction site or location where the goods are to be delivered must be suitable for Kingspan's transport vehicles, and that the designated construction site must be suitable and sufficiently spacious for loading and unloading, lifting and hoisting equipment, and assembly. The Customer will ensure that no activities will be performed, whether or not by third parties, at sites where Kingspan or third parties engaged by Kingspan are to perform work in the context of the agreement, at the times when Kingspan or third parties engaged by Kingspan are to perform the work in question.

4.8 In general, the Customer will lend all cooperation to enable Kingspan to perform the agreement in accordance with the conditions set out therein and/or in these Terms and Conditions. If the Customer fails to comply with the provisions of these Terms and Conditions or the agreement, or otherwise fails to cooperate in this regard, Kingspan will be entitled to separately charge the Customer for the additional costs it incurs as a result.

4.9 In general, the Customer is responsible for the accuracy of the information and details provided by the Customer, as referred to in – inter alia, but not exclusively – this clause. The Customer is expected to check the information provided by the Customer for inaccuracies in advance and to notify Kingspan immediately of any ambiguities that the Customer discovers or should reasonably have discovered. The Customer is furthermore expected to be an expert in the field on which the Customer provides Kingspan with the information referred to in – inter alia, but not exclusively – this clause.

4.10 If the Customer fails to fulfil the obligations described in the preceding paragraphs and the performance of the work is delayed as a result, the work will be performed if and as soon as Kingspan's schedule allows. In addition, the Customer will be liable for all losses and costs incurred by Kingspan as a result of the delay. Without prejudice to this right to suspend performance and the right to claim performance by the Customer, Kingspan will be entitled to dissolve the agreement in part while retaining the right to claim full payment for the part of the work that was performed and the profit that Kingspan would have made if the work had been performed in full.

## **Clause 5. Contract variations**

5.1 The Customer may request changes to the agreed work before or during the performance of that work by Kingspan. Only changes accepted in writing by Kingspan will be eligible for implementation. The Customer is expected to be aware of the fact that changes to the work may involve price increases. Kingspan will be entitled to refuse changes or dissolve the agreement if it deems the requested changes to be unacceptable.

5.2 Kingspan is entitled to charge the Customer for contract extras and changes to the agreed work, whether or not foreseen by Kingspan. Contract extras and changes to the agreed work include everything that Kingspan, at the request, with the permission or for the benefit of the Customer, delivers and/or installs and/or performs in the context of the agreement in excess of the provisional sums, estimated or offsettable quantities and/or activities expressly laid down in the agreement, or in excess of that which Kingspan was reasonably required to deliver, install or perform under the agreement.

5.3 In the event of changes to the agreed work and contract extras and/or requests for such as referred to in the preceding paragraphs of this clause, Kingspan will be entitled to extend agreed deadlines (including, but not limited to, delivery periods) and/or schedules, and to charge the Customer a price increase for such changes and contract extras. The Customer is expected to be aware of the price increase resulting from the contract extras.

5.4 Kingspan will inform the Customer as soon as possible of any contract extras performed by Kingspan. The additional or reduced costs resulting from the preceding paragraphs of this clause will be charged to the Customer or settled with the Customer as soon as they become known to Kingspan, immediately after completion of the relevant contract variations. If the Customer does not consent to the amounts stated by Kingspan within 7 days of them being stated as referred to in this clause, Kingspan will be entitled to suspend the work without notice until such consent is obtained or until agreement is reached on those amounts. The final sentence of the first paragraph of this clause applies *mutatis mutandis*.

5.5 If, on settlement of the work, the total of the contract variations results in a reduction of the contract price, Kingspan will be entitled to payment of an amount equal to 30% of the reduction, excluding VAT.

## **Clause 6. Delivery**

6.1 The delivery period stated by Kingspan is only indicative, never constitutes a deadline, and is based on the details provided in writing by the Customer to Kingspan at the time the agreement was concluded, the circumstances applicable to Kingspan and, in so far as Kingspan is reliant on the performance of third parties, on details provided by those third parties to Kingspan. If the stated delivery period is exceeded, Kingspan will be in default only after written notice of default by the Customer in which Kingspan is given a reasonable period to still fulfil its obligations, taking into account all circumstances referred to in Clause 15.4, including those that cannot be characterised as beyond its control (force majeure).

6.2 The delivery period commences once the agreement has been concluded, all the details and/or materials necessary to perform the work (including the VAT/branch number of the Customer) have been provided to Kingspan, all permits and other formalities necessary for the performance have been obtained or fulfilled by the Customer and/or Kingspan has been informed in writing that these have been obtained, drawings including dimensions have been approved by the Customer, and payment has been received by Kingspan to the extent that the Parties agreed that payment would be made on conclusion of the agreement.

6.3 The delivery period will be extended by the period during which Kingspan suspends the performance of its obligations under the agreement in accordance with these Terms and Conditions and/or the law, or by the period during which Kingspan is unable to perform its obligations due to force majeure as described in Clause 15 of these Terms and Conditions. This period will also be extended by the period during which Kingspan is dependent on deliveries or the performance by third parties supplying Kingspan or Kingspan's subcontractors.

6.4 In the case of purchase, the risk passes to the purchaser/Customer on completion of the products at the place where they are located, regardless of who is responsible for the transport ("Ex Works" (EXW (Uden) – Incoterms 2022)). In the case of contracting of work by Kingspan, the client/Customer bears the risk associated with the materials, equipment and products present at the site of the work as from the moment they are supplied to the work, regardless of the applicability of the provisions of paragraph 2 of this clause.

6.5 Kingspan is entitled to make partial deliveries. With regard to partial deliveries, Kingspan is also entitled to invoice separately for partial deliveries.

6.6 The Customer is obliged to lend the cooperation necessary for the performance of the agreement. This cooperation will be deemed to have been refused:

- if the Customer is responsible for transport, but the relevant products/materials are not collected by or on behalf of the Customer on the date agreed for that purpose;
- if Kingspan is responsible for transport and the products/materials have been offered to the Customer for delivery, but delivery proves impossible or is refused by the Customer;
- if the Customer refuses to grant Kingspan access to the work and/or otherwise prevents or impedes the performance of the agreement by Kingspan.

6.7 In the cases referred to in paragraph 6 of this clause, the Customer will be immediately in default without further notice of default. The day on which the refusal takes place will be deemed to be the delivery date of the products/materials in question. In that case, all amounts the Customer owes to Kingspan under the relevant agreement will become immediately due and payable in full. The Customer is liable for any additional costs and other losses incurred by Kingspan in this context. If the Customer refuses to take delivery of the products/materials in question, Kingspan will be entitled to store those products/materials at the risk and expense of the Customer, to sell them to one or more third parties or to otherwise dispose of them. The Customer must bear the costs involved and any losses incurred.

## **Clause 7. Delivery on demand**

7.1 In the case of delivery on demand, Kingspan will deliver the products/materials in question within 30 business days after the day on which they are ordered. If order deadlines have been agreed, this delivery period will be extended by 10 business days in the event of a late order. Clause 6.1 applies *mutatis mutandis*.

7.2 The Customer is obliged to order, failing which Kingspan will be entitled to store or arrange the storage of the products/materials at the risk and expense of the Customer, or to sell or arrange the sale of the products/materials at the risk and expense of the Customer, without prejudice to Kingspan's other rights in this context. If the products/materials are stored in accordance with the preceding sentence, they will be deemed to have been delivered. The Customer will be liable for any additional costs and other losses incurred by Kingspan in this regard.

7.3 In the case of delivery on demand, the transfer of title will also take place subject to the condition precedent of full performance of the obligations by the Customer. Clause 17 applies *mutatis mutandis*.

## **Clause 8. Completion**

8.1 The work created by Kingspan will be deemed to have been completed once the work has been made available to the Customer/client. Kingspan will notify the Customer of this availability without delay. The Customer must inspect the work within two weeks after Kingspan's notification of its availability. Kingspan will determine the date and time of the inspection of the work.

8.2 If the Customer finds defects in the work, the Customer must grant Kingspan a reasonable period within which it may repair the defects found. Minor defects that do not prevent the Customer from putting the work into use are no reason not to proceed with inspection and/or completion of the work.

8.3 If the Customer does not inspect the work within two weeks after Kingspan's notification referred to in paragraph 1 of this clause, the work will be deemed to have been completed and Kingspan will no longer be liable for any defects in or on the work. This will not apply if the work or any part thereof contains a hidden defect as a result of an attributable failure by Kingspan or its personnel and Kingspan is notified of this defect in writing as soon as possible after its discovery. The Customer must provide evidence of the aforementioned failure and its attributability. A hidden defect is a defect that the Customer could not reasonably have discerned, despite careful supervision during the performance or the inspection and completion of the work.

8.4 Kingspan is not liable for defects that the Customer should reasonably have discovered during or before completion through careful supervision, and the Customer is obliged to inform Kingspan of any defect within a reasonable period after the Customer discovers or should reasonably have discovered the defect, but in any event within one calendar month, on pain of forfeiture of all rights arising from this defect.

8.5 Any legal claim ensuing from a defect or hidden defect will lapse two years after the Customer protests the matter and in any event three years after completion unless a provision of mandatory law provides otherwise.

8.6 The Customer may impose discounts on the contract price on Kingspan for late completion of the work. § 42.2 of the Uniform Administrative Conditions applies *mutatis mutandis*, without prejudice to the provisions of Clause 16 of these Terms and Conditions.

8.7 If and as soon as the Environment and Planning Act (*Omgevingswet*) and the related Quality Assurance in the Building Sector Act (*Wet kwaliteitsborging in de bouw*) come into force, the Customer must, on pain of forfeiture of any rights, discuss the rights and obligations arising therefrom with Kingspan in order to amend the Agreement in such a way that it corresponds as closely as possible to the division of rights and obligations contained in the Agreement and these general terms and conditions.

## **Clause 9. Packaging**

9.1 Any packaging that Kingspan deems necessary, including metal frames, glass racks and suchlike, will always remain the property of Kingspan.

9.2 Kingspan is entitled to charge the Customer costs or a deposit for the packaging, without prejudice to Kingspan's right to compensation for damage to the packaging or the costs of its loss.

## **Clause 10. Prices**

10.1 All prices used by Kingspan are exclusive of packaging, shipping, transport, travel and accommodation costs, and costs related to border crossings, loading and unloading of materials, VAT, assembly, testing and commissioning. In the case of delivery within the Netherlands, the Customer will not owe any transport costs if the invoice amount exceeds EUR 1,500 excluding VAT. Even if the Customer handles the transport, Kingspan will not give a discount on the invoice amount or any other compensation. In the case of invoice amounts below EUR 1,500 excluding VAT, Kingspan will charge a EUR 50 administration fee.

10.2 The prices stated by Kingspan are based on all price-determining factors applicable at the time of the offer to the Customer, including existing laws and regulations, raw materials, energy, labour, transport and wage bills calculated in accordance with the working hours normally used at Kingspan. Kingspan is entitled to increase the agreed prices further to any subsequent increase of each individual price-determining factor by 1% or more and charge such increase directly to the Customer, even if such increase was foreseeable.

Kingspan will notify the Customer in writing of the price increases in question based on statement by its suppliers to that effect or other third parties or based on market-based evidence.

## **Clause 11. Payment**

11.1 Payment by the Customer must be made within 14 days of the invoice date, without discount, suspension or set-off. Payment must be made to the order of Kingspan to an account in the Netherlands to be designated by Kingspan, or in another manner to be specified by Kingspan.

11.2 In the absence of timely payment, the Customer will be in default immediately and all receivables which Kingspan has on the Customer will become immediately due and payable. Kingspan will then be entitled to suspend the performance of the agreement without notice of default being required.

11.3 The full claim for payment will also become immediately due and payable if the Customer is declared bankrupt, or a bankruptcy petition is filed by or against them or if the Customer applies for suspension of payments, the Customer's property or claims are attached, the Customers that are legal entities are dissolved or liquidated or any change in the capacity of Customer is made through an amendment to corporate law, their shareholdings or share ownership or their management or management authority or the Customers who are natural persons are placed under guardianship or dies.

11.4 The Customer will, without notice of default being required, owe 1.5% per month in default interest on all outstanding invoice amounts not paid on the due date, including VAT, unless the statutory interest is higher, in which case that statutory interest will apply. For the purpose of calculating the interest, part of a month will be considered a whole month. If the extrajudicial costs actually incurred exceed 15% of the amount that has not been paid, the costs actually incurred are payable.

11.5 If the Customer is in default to Kingspan, they will be obliged to fully compensate any extrajudicial costs Kingspan incurred for the collection of the amounts with regard to which they are in default. The costs in question are at least 15% of the unpaid amount including VAT and plus the aforementioned interest, with a minimum of EUR 500 and plus the VAT owed. These costs are increased by the costs of legal assistance in the extrajudicial phase of collection, including the costs stipulated in Clause 23(2).

11.6 In the event of judicial or arbitration proceedings in this context, if the Customer is the sole or predominantly non-prevailing party, then, in addition to the costs determined by the court or arbitrator(s), the Customer will owe Kingspan the actual litigation costs and costs of legal assistance incurred to the extent that such actual costs exceed the costs established by the court or arbitrator(s).

11.7 Kingspan is at all times entitled to set its claims against the Customer off against its debts to the Customer, even if the counterclaim has been assigned to a third party. For the purposes of this clause, the Customer is also understood to include the Customer's affiliated companies,

11.8 Payments made by the Customer will always first be applied to interest and costs owed, then to due and payable claims for which no valid retention of title can be demanded and finally to the invoices or receivables that have been outstanding the longest, even if the Customer states that the payment relates to different or later invoices or receivables.

11.9 Kingspan is entitled to demand security from the Customer, which the Customer is obliged to provide. The security in question must be such that it adequately covers all that the Customer owes or comes to owe Kingspan by any virtue whatsoever. If, in Kingspan's opinion, the Customer refuses to provide adequate security, Kingspan will be entitled to suspend its obligations to the Customer or to dissolve the agreement. Any related costs or loss or harm must be compensated by the Customer.

11.10 Kingspan must be notified of any objections to invoices in writing within eight working days of the invoice date, failing which such invoices will be deemed to be correct and complete and its indebtedness will be deemed to have been established.

## **Clause 12. Inspection and complaints**

12.1 The Customer is obliged to inspect the items delivered to them by Kingspan immediately upon or after receipt. If the Customer does not submit a complaint within two working days after receipt of the items delivered, the quantities stated on waybills, delivery notes, invoices or similar documents will be deemed to be correct.

12.2 Any defects in the items delivered that are observable immediately upon receipt must be specified by the Customer immediately in writing on the waybill with a clear description of the complaint in question. Other complaints must be submitted to Kingspan by the Customer in writing no later than two working days after receipt of the products/materials in question, or after any defects could reasonably have been discovered. In the absence of timely complaints, or if the products/materials delivered have been processed in whole or in part, the products will be deemed to have been approved and it will no longer be possible to submit a complaint unless the defect \*\*could not have been detected until the time of processing, without prejudice to the Customer's obligation to file a timely complaint in that case. If the Customer does not comply with the methods of submitting a complaint prescribed in this clause, all their rights in this regard will lapse.

12.3 The Customer will lend all cooperation required by Kingspan as part of the investigation in response to the complaint, including by providing relevant sample materials and by giving Kingspan, in so far as Kingspan deems relevant, the opportunity to conduct an investigation or to have third parties conduct an investigation into the conditions at the site of storage and/or processing of the products/materials in question.

12.4 After the Customer has properly submitted a complaint and Kingspan has accepted the complaint, Kingspan will have the right, at its discretion, to repair or redeliver the products/materials in question or to dissolve the agreement in whole or in part subject to a refund/settlement of the relevant purchase price or part thereof, without the Customer otherwise being entitled to compensation.

12.5 The Customer will have no right to complain if one of the situations referred to in Clause 6.6 of these Terms and Conditions occurs or as long as the Customer has not met all their obligations to Kingspan.

12.6 Any colour deviations of materials to be delivered by Kingspan must be established by the Customer before the start of production. If the Customer does not avail themselves of the opportunity to assess the materials for colour deviations before production, the risk thereof will be borne by them and their right to complain about these colour deviations after the delivery will lapse.

### **Clause 13. Warranties**

13.1 Kingspan warrants the absence of construction and/or material faults during the warranty period agreed upon for the relevant product or the work performed. Kingspan will, at Kingspan's discretion, repair, correct or replace products and/or work performed that the Customer/Client sufficiently demonstrates to have become defective within the warranty period as a result of such fault or credit the Customer/Client for a proportionate part of the invoice. Repairs, correction or replacement will take place on-site at the Customer's/Client's premises or at a location to be specified by Kingspan, such at the discretion of Kingspan. The Customer/Client must ensure the presence of and bear the cost of power, hoisting, lifting and transport equipment, scaffolding, window cleaning equipment and the like.

13.2 If Kingspan uses materials or services supplied by third parties in the execution of its performance, then Kingspan's warranty to the Customer/Client will never extend beyond the warranty Kingspan obtains from its supplier or subcontractor.

13.3 If the agreed-upon performance consists of contract work, then Kingspan warrants the soundness of the construction delivered and the materials used during the warranty period referred to in paragraph 1, provided that Kingspan was free to choose the said construction and materials. Soundness in this context means that the construction and materials meet the requirements referred to in the VMRG Quality Requirements and Advice, including any supplements as they read three months prior to the date on which the agreement is concluded, which quality requirements and advice can be consulted directly on the [VMRG.nl website](http://VMRG.nl).

13.4 If the agreed-upon performance consists only of delivery of an item, then Kingspan will warrant the soundness of the item delivered during the warranty period referred to in paragraphs 1 and 2. If it turns out that delivery was not sound, the item must be returned to Kingspan carriage paid. After that, Kingspan will choose whether to repair or replace the item or to credit the Customer/Client for a proportionate part of the invoice and notify the Customer in writing.

13.5 If the agreed-upon performance consists only or partly of the provision of a service, then Kingspan will provide this service on the basis of a best efforts obligation. Kingspan will use its best efforts to provide the service with due care.

13.5 If the agreed-upon performance relates to the provision of an ICT service or supply of hardware components, then Kingspan does not warrant the faultless and uninterrupted functioning of the service, software or hardware components.

13.6 The cost of replacement or repair will be borne by Kingspan up to that part of the invoice amount (excluding turnover tax) that relates to the manufacturing and assembly costs of the part in question or up to the warranty that Kingspan obtains from its supplier or subcontractor.

13.7 The Customer/Client will not be able to invoke the warranty until such time as the Customer/Client has fulfilled all relevant obligations to Kingspan under the agreement under which the warranty applies. Suspension of the effective date of the warranty in connection with the latter will not affect the end date of the warranty.

13.8 Redelivery, replacement or repair under the warranty does not extend or renew the term of such warranty.

13.9 Unless otherwise agreed, the warranty does not cover:

- travel, accommodation and transportation costs incurred by Kingspan in connection with the relevant warranty;
- the costs of assembly/disassembly incurred by Kingspan, unless assembly/disassembly takes place within the first warranty year;
- all other costs incurred by Kingspan in connection with the work performed by Kingspan that exceed the mere obligation to repair, correct or replace as referred to in paragraph 1 of this clause, such as, among other things, but not limited to, the costs of scaffolding and safety and other facilities necessary for assembly/disassembly and the costs in connection with any permits/exemptions that need to be applied for, or applied for again, in this context.

13.10 The Customer/Client is not entitled to invoke the warranty if:

- a) Kingspan has given notice that it does not agree with the choice of materials and/or working method prescribed by the Customer/Client with respect to which the warranty is invoked;
- b) work has been carried out by the Customer/Client or third parties on the product or the realised work or installation, assembly and/or repair has taken place and/or additions have been made, regardless of whether these have resulted in changes to the product or realised work;
- c) that warranty is invoked with respect to defects resulting from form changes in structures built by the Customer/Client or third parties, from construction, repair, cleaning or other work not properly carried out by the Customer/Client or third parties, or from the use by the Customer/Client or third parties of materials unsuitable for their purpose;
- d) defects in or on the product are the result of weathering or unforeseen harmful influences of the environment, temporary or permanent, and/or normal wear and tear or injudicious or abnormal or careless use, or external influences, which have arisen during or after delivery or completion;
- e) defects have been caused by awnings, window cleaning equipment, ladders and the like;
- f) defects result from the breakage of thermal or other glass, or the use of wired or plate-wired glass;
- g) defects result from heat loads exceeding 70°C;
- h) defects result from caulking, except where waterproofing is concerned;
- i) defects have been caused by sealing profiles (E.P.D.M), except where flexibility is concerned;
- j) the warranty is invoked in response to filiform corrosion;
- k) the warranty is invoked in response to colour differences and/or loss of gloss in accordance with what is stipulated in that respect in the aforementioned VMRG Quality Requirements and Advice, as applicable three months prior to the conclusion of the agreement;
- l) there has been no or insufficient maintenance or cleaning in accordance with a maintenance agreement entered into with Kingspan;
- m) the invocation of the warranty relates to minor imperfections in terms of finishing that do not impair soundness;
- n) the product is not used in accordance with the agreed use;
- o) the Customer/Client does not or does not fully comply with any obligation arising from these Terms and Conditions or an agreement subject to these Terms and Conditions, including financial obligations;
- p) the relevant defects can be attributed to items and/or materials or parts and/or methods and/or constructions that deviate from the regulations, requirements and advice referred to in the aforementioned VMRG Quality Requirements and Advice, to the extent that these have been applied on the explicit instructions of the Customer/Client or these defects are caused by or result from a subcontractor prescribed by the Customer/Client;
- q) the details, including product details, presented in or on the product have been removed or have become illegible;
- r) the defect in question could have been detected at the time of delivery or completion;
- s) the defect in question has not been reported in writing to Kingspan by the Customer/Client within eight days after the defect was discovered or could have been discovered;
- t) defects are due to other circumstances for which Kingspan does not bear the expense and risk.

13.11 With respect to materials, equipment, installations, etc. procured from third parties, Kingspan will not be bound to a longer warranty period or any further-reaching liability than the relevant manufacturer or supplier is prepared to accept to Kingspan with respect to these products, without prejudice to the other provisions of this clause.

#### **Clause 14 Attributable failure and dissolution**

14.1 If the Customer or any affiliate of the Customer fails to comply properly or in time with any obligation that may arise for the Customer under any agreement with Kingspan, the Customer will be in default without notice of default being required and Kingspan, without prejudice to its right to damages, expressly including damages for consequential loss or harm, will be entitled, without notice of default or judicial intervention being required:

- to suspend performance of the agreement and directly related agreements and/or obligations until the performance of the Buyer's obligations has been secured to a sufficient degree

and/or

- to dissolve the agreement and directly related agreements in whole or in part. Upon dissolution by Kingspan, the Customer will not be entitled to damages in any form whatsoever.

14.2 In the event of a provisional/final suspension of payment, bankruptcy, cessation or dissolution of the Customer's business or attachment of the Customer's assets, all Kingspan's agreements with the Customer will be terminated by operation of law, unless Kingspan notifies the Customer within a reasonable period of time that it requires performance of the relevant agreements or part thereof. In the latter case, Kingspan will be entitled, without notice of default being required, to suspend performance of the agreement until performance by or on behalf of the Customer has been secured to a sufficient degree. The provisions of this paragraph of this clause will apply *mutatis mutandis* if the Customer's company undergoes or is the subject of a corporate-law amendment, which will or may affect the control structures.

14.3 If a situation as referred to in Clause 14.1 or 14.2 arises, all Kingspan's claims against the Customer will become immediately due and payable in full and Kingspan will be entitled to store, procure the storage of, or sell the raw materials, materials, parts and other items reserved, processed and/or manufactured by Kingspan for the performance of the Agreement at the expense and risk of the Customer and pay itself from the proceeds thereof.

14.4 Dissolution as referred to here will not affect Kingspan's other rights as laid down in these Terms and Conditions.

#### **Clause 15. Non-attributable failure (force majeure)**

15.1 If due to a non-attributable failure (force majeure) Kingspan cannot fulfil its obligations to the Customer, including, for example, those relating to warranty obligations, then fulfilment of those obligations will be suspended for the duration of the force majeure situation.

15.2 Once the force majeure situation has lasted six months or once it has become clear that it is going to last at least six months, both parties will be entitled to dissolve the agreement in writing in whole or in part, to the extent that the force majeure situation justifies this, or to invoke Article 258 of Book 6 of the Dutch Civil Code to amend the Agreement.

15.3 In the event of force majeure, the Customer will not be entitled to any damages, even if the force majeure may inure to the benefit of Kingspan.

15.4 Force majeure includes, but is not limited to, all unworkable circumstances beyond Kingspan's control that completely or partially prevent the fulfilment of its obligations to the Customer as a result of which the fulfilment of its obligations cannot reasonably be required of Kingspan, regardless of whether those circumstances were foreseeable at the time of the conclusion of the Agreement. Unworkable circumstances include interruption, hindrance or delay as a direct/indirect result of epidemics, war, strikes and lockouts, precipitation, wind and frost or other unworkable weather conditions, business interruption or other problems in the production or execution of work by Kingspan or its subcontractors, suppliers and/or in the transportation arranged by itself or third parties, measures imposed by any government agency and the absence of any government permit or certificate to be obtained, to the extent that these circumstances are the cause that prevents the realisation or execution of the work in accordance with the agreed-upon or other applicable requirements and/or deadlines.

15.5 Kingspan will notify the Customer of an actual or possible force majeure situation as soon as possible.

#### **Clause. 16. Liability and indemnity**

16.1 Kingspan is liable for the Customer's/Client's loss or harm resulting directly and exclusively from a failure attributable to Kingspan. Kingspan is not liable for any consequential or indirect loss or harm, as provided in the second paragraph. However, only the loss or harm for which Kingspan has or reasonably should have insurance cover will be eligible for compensation. If and to the extent that no payment under the insurance is forthcoming, any liability on the part of Kingspan will be limited, cumulatively, to the invoice value of that part of the products delivered and paid for and of the work performed and paid for that caused the loss or harm, up to a maximum of EUR 25,000.

16.2 Any further-reaching liability of Kingspan is excluded. Kingspan expressly accepts no liability for, and the Customer/Client indemnifies Kingspan against, third-party claims in respect of:

a. loss or harm resulting from unsoundness of materials or parts provided by or on behalf of the Customer/Client or a construction prescribed by the Customer/Client and/or design and/or drawing and/or calculation not originating from Kingspan;

- b. loss or damage resulting from drifting snow, wind with a speed of more than 14 metres/second or strong atmospheric changes;
- c. indirect and/or consequential loss or harm, including intangible loss or harm, trading losses, such as business interruption losses and lost profits, or environmental harm;
- d. damage to property in the care, custody or control of, but not owned by the insured, including damage caused by or during the performance of the contracted work to objects on which work is being performed or to objects located in the vicinity of the place where work is being performed;
- e. loss or harm resulting from loss, theft, burning or damage to tools, materials and/or other Kingspan property, to the extent that such loss or harm is not covered by a construction all risk (CAR) insurance, such as in the case of renovation or service/maintenance work.

16.3 The Customer/Client indemnifies Kingspan against all product liability claims by third parties as a result of a defect in a product supplied by the Customer/Client to a third party that consisted in part of products and/or materials supplied by Kingspan.

16.4 Conditions that can be asserted against Kingspan that limit or exclude liability in connection with goods or services supplied to it by its suppliers or subcontractors can also be asserted by Kingspan against the Customer/Client and/or business contacts of the Customer/Client.

16.5 The employees of Kingspan or third parties engaged by Kingspan for the performance of the agreement can invoke all defences to be derived from the agreement against the Customer/Client and/or business contacts of the Customer/Client as if they themselves were parties to the agreement.

16.6 Any claim against Kingspan in this regard, except for that claim which has been recognised by Kingspan and a claim referred to in Clause 8(5) of these Terms and Conditions, will lapse twelve months after the claim arises, unless a provision of mandatory law provides otherwise.

16.7 The Parties have taken out and will maintain adequate insurance cover for the risks for which the Parties may be liable under the agreement. In the event of contract work, the Customer/Client is obliged to take out, at the Customer's/Client's own expense, a proper construction all risk (CAR) insurance under which Kingspan is co-insured without any exclusions or excess on the part of Kingspan, unless Kingspan is to be regarded as the main contractor. The Customer/Client will bear the expense and risk of any obligation, regardless of to whom, arising from the applicability of any excess on any insurance in this regard.

## **Clause 17. Retention of title**

17.1 Notwithstanding the actual delivery, ownership of products delivered by Kingspan will not transfer to the Customer until the Customer has paid in full all that the Customer owes or will owe Kingspan under the agreement. Until the time of full payment, the Customer is not authorised to pledge or transfer ownership of the products to third parties. The latter prohibition is expressly intended to have effect under property law and renders the Customer without power of disposition with respect to the pledge or transfer of ownership. Any juridical or other act performed in violation of this provision will be null and void.

17.2 If the Customer fails to comply with the applicable obligations or there is a well-founded fear that the Customer will fail to do so, Kingspan will be entitled, without prior notice of default being required, to retrieve or procure the retrieval of the delivered products without delay. The Customer is obliged to lend all cooperation to this end on pain of incurring a penalty in the amount of 30% of the invoice amounts, including VAT, relating to the products concerned.

17.3 The Customer is obliged to keep the products referred to in this clause sufficiently separated from other products and to keep them adequately insured, at least against the risk of theft, damage and destruction. The Customer is not permitted to pledge or transfer ownership of any claims against its insurer under any insurance policy referred to in this paragraph to third parties. The prohibition of pledging or transferring ownership referred to in the second and third sentences of paragraph 1 of this clause apply *mutatis mutandis*. Payments in respect of damage to and loss of the products referred to in this clause will take the place of the products in question. The Customer is furthermore obliged to keep the marks and/or signs affixed to the products intact.

17.4 If Kingspan cannot invoke its retention of title because the items it delivered have become subject to confusion, specification or accession, the Customer will be obliged to pledge the items newly formed in this context to Kingspan.

17.5 In the event of attachment, provisional/definitive suspension of payments or bankruptcy, the Customer will immediately inform the bailiff effecting attachment, the administrator or the bankruptcy trustee of Kingspan's proprietary and other rights in respect of the goods it has delivered to the Customer, on pain of incurring an immediately due and payable penalty of EUR 5,000 or, if higher, of the original invoice amount in respect of the products to which Kingspan loses title.

## **Clause 18. Right of retention**

Kingspan is authorised to suspend the surrender of any items that it holds in its possession for or on behalf of the Customer and to retain such items until the Customer has fulfilled all relevant obligations to Kingspan with which the items in question are directly or sufficiently related to justify the suspension and refusal to surrender. Kingspan is not limited for damage to the items in its custody, except where it imputably fails to fulfil the duty of care that it may be expected to fulfil in this context. To secure its right of retention, Kingspan is authorised to seal off storage and construction sites and deny access, even if such sites are part of another project.

#### **Clause 19. Intellectual property**

19.1 Kingspan grants the Customer a non-exclusive and non-transferable, non-pledgeable and non-sublicensable right of use in respect of the goods made available to and the works realised for the Customer under the agreement entered into between Kingspan and the Customer, including all documents, technical and other information, methods, processes, drawings, diagrams, models, calculations, designs and all software and data in that context. The intellectual property rights to the aforementioned goods made available to the Customer under the agreement and works and objects realised for the Customer or under the agreement are and will remain vested in Kingspan or the third party that has authorised Kingspan to make those goods and realised works available to the Customer.

19.2 Kingspan warrants that any rights held by third parties will not prevent the Customer from using the goods and realised works in question in accordance with the provisions of the Customer's agreement with Kingspan. Unless otherwise agreed, the Customer will not be permitted to alter, copy or make available in any form to third parties or – to the extent possible – grant access to any goods made available to and works realised for the Customer as specified in the first paragraph of this clause.

The right of use in this context applies for an indefinite period of time, but may be terminated by Kingspan without notice of default being required and with immediate effect if the Customer breaches any obligation under these Terms and Conditions or any agreement with Kingspan or otherwise acts unlawfully in that regard.

19.3 If the provisions of the second sentence of paragraph 2 are violated, the Customer will owe Kingspan an immediately due and payable penalty of EUR 100,000 per violation, which is not subject to mitigation and/or set-off, without judicial intervention being required. This penalty may be claimed in addition to full damages under the law and is without prejudice to Kingspan's other rights in this context.

19.4 The Customer must return the data provided to it as referred to in paragraph 1 upon Kingspan's first request within the time limit set by Kingspan. If this provision is violated, the Customer will owe Kingspan, without judicial intervention being required, an immediately due and payable penalty, which is not subject to mitigation and/or set-off, of EUR 1,000 for each day, with part of a day counting as a day, that the violation persists. This penalty may be claimed in addition to full damages under the law and is without prejudice to Kingspan's other rights in this context.

19.5 The Customer indemnifies Kingspan against all third-party claims for damages based on infringement of intellectual property rights of those third parties through the use of drawings, data, materials or parts, or caused by the application of the method provided or prescribed to Kingspan by or on behalf of the Customer for the performance of the agreement.

#### **Clause 20. Confidentiality**

20.1 The Customer warrants that it will observe confidentiality in dealings with third parties with regard to all data, practices and other matters qualified as confidential by Kingspan and the data, practices and other matters whose confidentiality is not explicitly indicated, but which the Customer should reasonably understand to be confidential and which come to the knowledge of the Customer's personnel or third parties engaged by the Customer in the context of the formation and/or performance of any agreement with Kingspan.

20.2 If the provisions of paragraph 1 are violated, the Customer will owe Kingspan an immediately due and payable penalty of EUR 100,000 per violation, which is not subject to mitigation and/or set-off, without judicial intervention being required. This penalty may be claimed in addition to full damages under the law and is without prejudice to Kingspan's other rights in this context.

20.3 The Customer will in any case be obliged to observe confidentiality as referred to in paragraph 1 with regard to the goods and works referred to in paragraph 1 of Clause 19 of these Terms and Conditions.

#### **Clause 21. Strict liability on the part of the Customer**

21.1 If Kingspan finds that information and goods made available to and/or works realised for the Customer are made available to a third party or used by a third party without Kingspan's prior written consent, regardless of how such use takes place, then the Customer will be deemed to have violated the provisions of Clause 19 and/or Clause 20 of these Terms and Conditions, unless the Customer, in Kingspan's opinion, submits solid evidence to the contrary.

21.2 The Customer is obliged to impose the obligations arising for the Customer from Clauses 19 and 20 of these Terms and Conditions on the Customer's client or on the third parties engaged by the Customer's client, failing which the Customer will forfeit to Kingspan an immediately due and payable penalty, not subject to mitigation or set-off, of EUR 100,000 for each violation and without prejudice to Kingspan's right to claim full damages and the other rights to which Kingspan is entitled in this context.

## **Clause 22. Assignment of rights and obligations**

Kingspan is allowed to assign the rights and obligations described in any agreement with the Customer to third parties. The Customer is not entitled to assign any rights and/or obligations under any agreement to a third party without Kingspan's prior written consent.

## **Clause 23. Applicable law and disputes**

23.1 All offers, agreements and communications and all commitments of Kingspan arising therefrom are governed by Dutch law. The applicability of the U.N. Convention on Contracts for the International Sale of Goods (Treaty Series 1981, 184) or any other international regulation whose exclusion is permitted is expressly excluded.

23.2 A dispute exists between Kingspan and the Customer if either party indicates such in writing through a brief statement of what that party believes is the subject of dispute. To settle all disputes arising as a result of this Agreement or the agreements or instruments based on this Agreement or resulting from it, including those recognised as such by only one Party, the Parties will first make every effort to reach an amicable solution within one (1) month. To this end, duly authorised persons from each Party who are allowed to make final decisions on behalf of their Party will participate in such meetings and in any case will convene two (2) meetings in person to reach an amicable settlement.

23.3 If a dispute cannot be resolved through consultation as referred to in paragraph 2, it can be submitted to the District Court of Rotterdam, unless Kingspan prefers to have the dispute settled by arbitration. In the latter case, Kingspan will immediately announce to which arbitration tribunal the case will be submitted and under which regulations or rules of procedure the arbitration will be conducted. By entering into the Agreement, the Customer is deemed to have agreed in advance to this choice of forum and method of litigation.

## **Clause 24. Other conditions**

24.1 The nullity of any provision of these Terms and Conditions will not affect the validity of the other provisions. Null and void provisions will be replaced by new provisions that approximate the null and void provisions as closely as possible in terms of content, scope and objective.

24.2 If Kingspan concludes an agreement with two or more natural persons or legal entities, each natural person or legal entity will be jointly and severally liable for the full performance of the obligations arising from that agreement for the parties.

24.3 Kingspan's failure to demand performance of any provision of an agreement to which it is a party within a term referred to in the agreement will not affect the right to still demand performance unless the party in question expressly agreed to the non-performance in writing.