



D & Z DOMOTICA
CUSTOM AUTOMATION & AV SOLUTIONS

**GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY AND
THE SUPPLY OF SERVICES OF D&Z DOMOTICA**

CLAUSE 1. DEFINITIONS AND APPLICABILITY

- 1.1 The following definitions are used in these General Terms and Conditions:
- Affiliated Companies:** any legal entity that qualifies as a 'subsidiary' as referred to in Section 2:23a of the Dutch Civil Code ('DCC') or as a 'group company' as referred to in Section 2:24b DCC.
- Claims:** means any claim or proceeding of any nature (whether in contract, tort, breach of statutory duty or otherwise and including, but not limited to, a claim for negligence).
- Contract:** all agreements which have been concluded or shall be concluded in the future, either in writing, orally or implicitly (tacitly), between D&Z Domotica and a Buyer, including (but not limited to) Continuing Performance Contracts and all separate/individual purchase agreements which may ensue therefrom.
- Continuing Performance Contract** (in Dutch: "duurovereenkomst"): all Contracts which are concluded or shall be concluded in the future, either in writing, orally or implicitly/tacitly, between D&Z Domotica and a Buyer which regard the regular delivery of products and/or services during a certain period of time, including (but not limited to) service level agreements and/or other forms of maintenance contracts.
- Buyer:** any natural person or legal entity who/which places an Order with D&Z Domotica, or to whom/which D&Z Domotica issues an Offer or with whom/which D&Z Domotica has entered into or shall enter into a (Continuing Performance) Contract.
- D&Z Domotica:** D&Z Domotica B.V. (Trade Register number: 74198475) and all of its Affiliated Companies, including D&Z Domotica Custom S.L. (NIF/CIF: B16641243).
- Deliverables:** means all Services, products, equipment, soft-/hardware and all other materials or deliverables produced, delivered, used and/or provided by D&Z Domotica to a Buyer.
- General Terms and Conditions:** these present General Terms and Conditions of Sale and Delivery.
- Losses:** means any harm, (financial) loss, (material) damage, costs or expenses suffered by any party, as well as all Claims and liabilities in any way relating to or arising out of a Contract, an Order and/or Deliverables.
- Offer:** any offer communicated orally or in writing by D&Z Domotica to a Buyer regarding the purchase of Deliverables from D&Z Domotica.
- Order:** any written or oral request from a Buyer to D&Z Domotica to deliver Deliverables to the relevant Buyer.
- Services:** means all services provided by D&Z Domotica.
- 1.2 These General Terms and Conditions apply to all current and future (Continuing Performance) Contracts, Orders and/or Offers issued by D&Z Domotica, as well as to all Deliverables provided by D&Z Domotica.
- 1.3 Accepting an Offer, placing an Order (or causing an Order to be placed), or concluding a Contract with D&Z Domotica shall constitute the Buyer's acceptance of the applicability of these General Terms and Conditions as well as the exclusion of any general terms and conditions imposed by that Buyer.
- 1.4 Deviations from these General Terms and Conditions shall only be valid if D&Z Domotica consents to such deviations expressly and in writing.

CLAUSE 2. OFFERS, ORDERS AND FORMATION OF CONTRACTS

- 2.1 All Offers, Orders and prices stated by D&Z Domotica are free of obligation. D&Z Domotica will be entitled at all times to refuse Orders or refuse to process Orders, regardless of whether these are placed pursuant to an Offer that has been issued, without giving any reason for said refusal because of – amongst other reasons – the fact that D&Z Domotica does not and cannot always deliver from its own stock, so its delivery can be dependent on third parties. Therefore, unless agreed otherwise in writing, D&Z Domotica shall not have any delivery obligation or continuous delivery obligation to a Buyer whatsoever. Furthermore, such a (continuous) delivery obligation cannot and shall not arise by virtue of the mere fact that D&Z Domotica did regularly process previous Orders from a Buyer during a particular period of time.
- 2.2 A Contract shall only be formed after D&Z Domotica accepts a Buyer's Order, including if a Buyer has placed an Order based on an obligation-free Offer that has already been made.
- 2.3 As soon as an Order placed by a Buyer is accepted by D&Z Domotica or at any rate is actually being processed, such Order cannot be cancelled and the Buyer will be obliged to purchase the ordered Deliverables. The Buyer's non-purchase of the Deliverables in question will not relieve the Buyer of its obligation to pay for those Deliverables.

CLAUSE 3. PRICES, INVOICING AND PAYMENT CONDITIONS

- 3.1 Unless expressly agreed otherwise, all prices stated by D&Z Domotica are denominated in euros and are exclusive of VAT and costs for handling, packaging, postage (international or otherwise), port duties and/or transport fees, any taxes and/or any other levies, cost or (out of pocket) expenses. D&Z Domotica is entitled to invoice such costs and out of pocket expenses separately (such as – but not limited to – waiting hours, settled provisional sums, call-out charges, travelling and accommodation/hotel expenses, et cetera).
- 3.2 The prices stated are free of obligation and may thus be changed by D&Z Domotica at any given time. If a price is changed after an Order has been placed, the Buyer will only be entitled to cancel the Order within five days after the price change is announced.
- 3.3 Prices agreed in Contracts that have already been concluded will not be binding in the event of manifestly and/or obvious errors (or typographical errors) and/or clerical errors.
- 3.4 Unless expressly agreed otherwise, D&Z Domotica is entitled to invoice all ordered Deliverables (partial or in whole) up front, as a prepayment. D&Z Domotica shall only (be obliged to) deliver ordered Deliverables to a Buyer, if the relevant invoice has been fully paid. In stead of payment up front, D&Z Domotica is – at its own discretion – also entitled to invoice (partial or in whole) periodically (i.e. weekly or monthly afterwards) for delivered products, Services performed and/or expenses incurred. Invoices shall mention VAT and shall include an accounting and verification of products, Services and (out of pocket) expenses. Unless alternative arrangements are made, all invoices must be paid within fourteen days after the invoice date. These and any alternative payment deadlines agreed with a Buyer are always absolute, even if D&Z Domotica agrees to later payment as a courtesy.
- 3.5 Failure to meet the aforementioned payment deadline will result in late payment interest being charged on the outstanding invoice at a rate of three percent (3%) per month, in which respect a part of a month will count as a full month. In such a case, D&Z Domotica will also be entitled to transfer the invoice to an external debt collection agency, in which case the Buyer will be liable to pay – in addition to the aforementioned late payment interest – all costs actually incurred (which may include extrajudicial collection costs, court costs, and any attorneys' fees), with the minimum amount being either EUR 250.00 (two hundred and fifty euros), exclusive of VAT or – at D&Z Domotica's discretion – fifteen percent of the amount of the outstanding invoice.
- 3.6 Suspension (in Dutch: "opschorting") and/or offset (in Dutch: "verrekening") of any payment (obligation) by a Buyer towards D&Z Domotica is prohibited and is expressly excluded.
- 3.7 Any payment made by a Buyer will first be applied to paying any late payment interest owed and will then be used to pay any costs owed, with the exception of court costs. Only after the aforementioned interest and costs are paid will any payment by the customer be deducted from the principal sum of an outstanding claim, in which respect the amount will first be applied to the oldest outstanding claim and/or the invoice that has been payable for the longest period of time, regardless of the notation the Buyer makes on the payment order.

CLAUSE 4. DELIVERANCE AND PERFORMANCE, TRANSPORT, PASSING OF RISK AND RETENTION OF TITLE

- 4.1 Delivery and/or performance times stated by D&Z Domotica are merely indicative. The exceeding of any delivery or performance deadline will not entitle the Buyer to claim Losses or to cancel the Order or rescind (in Dutch: "ontbinden") the Contract, unless and to the extent that the deadline is exceeded so egregiously that allowing the Contract to stand would be unacceptable under the standards of reasonableness and fairness.
- 4.2 Information about the Deliverables sold or delivered by D&Z Domotica (features, quality, color, drawings, pictures, size, weight, et cetera) is provided to the best of D&Z Domotica's knowledge and with the utmost care, but it cannot be considered as binding in anyway whatsoever.
- 4.3 All places and spaces where D&Z Domotica has to deliver, place and/or install Deliverables, have to be clean (clear of dust and building material).
- 4.4 If D&Z Domotica has reason to doubt a Buyer's creditworthiness (such to be determined at D&Z Domotica's sole discretion), D&Z Domotica will be entitled to require the Buyer to provide security for the performance of the latter's obligations, even, and primarily, after the Contract has been formed. If the security required by D&Z Domotica is not provided, D&Z Domotica will be entitled to suspend delivery.



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- 4.5 Deliverables of D&Z Domotica will remain the property of D&Z Domotica until the moment of full payment of all amounts the Buyer owes D&Z Domotica, including any late payment interest and costs. Title to the products D&Z Domotica delivers to the Buyer will only be transferred subject to the conditions precedent (as referred to in Section 3:92 DCC) of full payment by the Buyer of both the purchase price as well as any late payment interest and costs owed.
- 4.6 Delivery can take place by picking up the ordered products by the Buyer at the storage facility of D&Z Domotica or by transporting the products to the location of the Buyer, any other location or to the location of a third party. In all cases the risk associated with the products shall pass to the Buyer at the moment of loading the products into the means of transport. In other words, the risk of the products shall at all times pass to the Buyer as soon as the products have left (been removed from) the storage facility of D&Z Domotica, unless expressly agreed upon otherwise in writing.
- 4.7 In case the products will be transported to the location of the Buyer, any other location or to the location of a third party, unless expressly agreed otherwise, transport is at the risk of the Buyer.
- 4.7 As long as title to the products delivered by D&Z Domotica has not been transferred to the Buyer, the Buyer cannot, shall not and may not pledge the products, transfer title to those products to a third party, or encumber those products with any other right (restricted or otherwise), except to the extent the Buyer sells, processes and/or delivers the products to third parties in the normal course of its business. This provision shall have property law consequences (in Dutch: “*Goederenrechtelijk effect*”).
- 4.8 The Buyer grants D&Z Domotica in advance the right – and an irrevocable power of attorney – to enter all locations where products delivered by D&Z Domotica are located in a given case so that D&Z Domotica can exercise its rights of ownership and recover products which have not been paid for. The recovery of its goods in this manner will not prejudice D&Z Domotica’s right to claim Losses from the Buyer or to claim reimbursement of costs incurred in connection with the Buyer’s failure to perform.

CLAUSE 5. DUTY TO INSPECT, COMPLAINTS, LIMITATION OF ACTION AND LIABILITY

- 5.1 The Buyer must, immediately upon or after the deliverance/reception of Deliverables, check whether the delivered Deliverables are in accordance with the Order placed and/or satisfy the Contract, as well as whether there are any visible defects or damage to the products (duty to inspect).
- 5.2 In the event of complaints or defects:
- the Buyer must notify D&Z Domotica by email (info@dzdomotica.nl) of *visible* damage or defects or other externally identifiable damage or defects immediately (within twenty-four hours) after receiving the products, specifying the damage or defects in proper detail, in default of which the Buyer will no longer be able to reserve any rights regarding and/or invoke any defect, and it will be established between the parties that the Buyer received the products that were delivered in a sound and undamaged condition and in accordance with the quantity stated on the delivery notes;
 - the Buyer must notify D&Z Domotica by email (info@dzdomotica.nl) of *invisible* damage or defects, or other externally identifiable damage or defects, within five days after discovering such damage or defects, specifying the damage or defects in proper detail, in default of which the Buyer will no longer be able to reserve any rights regarding and/or invoke any defect.
- 5.3 The Buyer is not permitted to receive a delivery of products ‘subject to approval’ of any kind or subject to the reservation of any right. By actually taking receipt of the products delivered, the Buyer agrees to the provisions of Clauses 5.1 and 5.2, above.
- 5.4 The term for complaining about any invoices sent by D&Z Domotica is, at the most, forty-eight hours after receipt of the invoice. If the Buyer does not complain about the relevant invoice by email (info@dzdomotica.nl) within that term, in writing and with proper substantiation, it will be established between the parties that the invoice correctly reflects the underlying transaction(s) with D&Z Domotica.
- 5.5 Any right (or right of claim) which the Buyer can assert against D&Z Domotica relating to errors in D&Z Domotica’s delivery or defects in the Deliverables will irrevocably lapse as soon as the terms for filing a complaint stated in this clause have elapsed. If a Buyer fails to cooperate, or fails to cooperate sufficiently, with D&Z Domotica in investigating the validity of the claim in question within the aforementioned terms for filing a complaint, all related rights (or rights of claim) relating thereto will also immediately and irrevocably lapse. The Deliverables to which complaints relate must be available for possible inspection by D&Z Domotica in the condition in which the Deliverables were found on the date the defects were discovered. The right to complain – as well as all rights (or rights of claim) relating thereto – will lapse as soon as the Buyer puts the goods delivered into use, or treats or processes them, or causes them to be used, treated or processed, sells and/or delivers them in turn to third parties, unless D&Z Domotica has issued its advance written consent or the Deliverables are covered by a manufacturer’s warranty.
- 5.6 If the Deliverables demonstrably fail to meet the terms of the Contract (non-conformity), D&Z Domotica will always have the option of replacing the relevant Deliverables – after they are returned – with new Deliverables or refunding the invoice value.
- 5.7 To the extent permitted by law and in deviation of article 6:76, 6:170 and 6:171 DCC, D&Z Domotica is not liable for any Losses caused by its employees and subordinates (in Dutch: “*ondergeschikten*”), nor for any Losses caused by auxiliary persons, sub-contractors, independent contractors and/or other assisting third parties (in Dutch: “*hulpverleners*”) engaged by D&Z Domotica.
- 5.8 D&Z Domotica is not liable for any consequential and/or indirect Losses (in Dutch: “*indirecte schade*” or “*gevolgschade*”), including (but not limited to): loss of profits, income, revenue, turnover, anticipated savings, business, contracts, goodwill or commercial opportunities, as well as all other (forms of) consequential harm or business losses. Consequential and/or indirect Losses also explicitly includes all Losses that are arising out – or are the result – of errors, malfunctions and/or failures in the Deliverables (except as far as it concerns Losses to the Deliverables itself).
- 5.9 In no event shall D&Z Domotica be liable for any limited use or loss of data that could have been prevented by a Buyer executing adequate and proper back-up and storage procedures in line with common market practice, contracts, goodwill, revenues or profits (whether or not deemed to constitute direct losses) or any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to the Contract, the Deliverables and/or provided Services.
- 5.10 D&Z Domotica is only liable for direct Losses. Direct Losses are defined as Losses other than indirect or consequential Losses, incurred by the Buyer and can/shall solely (exclusively) be reasonable costs:
- to establish or determine the cause and the scope of the Losses, insofar as such establishments/determinations relate to direct Losses in the sense of these General Terms and Conditions;
 - incurred to bring the faulty performance by D&Z Domotica in line with the Contract, insofar as these are attributable (“in Dutch: “*toerekenbaar*”) to D&Z Domotica;
 - costs incurred to prevent or limit the Losses insofar as the Buyer proves that these costs have resulted in a limitation of the direct Losses as referred to in these General Terms and Conditions.
- 5.11 In addition, the maximum aggregate liability of D&Z Domotica for Losses shall be limited to two hundred percent (200%) of the amount (exclusive of VAT) paid or payable to D&Z Domotica by or on behalf of the Buyer with respect to the Deliverables, the delivered products and/or the provided Services which gave rise to the claim or action, such with a maximum of the total amount excluding VAT invoiced to the Buyer under the relevant Contract in the previous six months.
- 5.12 Notwithstanding the provisions in the previous paragraphs, any liability for damage arising from or in connection with a breach of contract or wrongful act of D&Z Domotica, its employees, partners and/or persons with whom D&Z Domotica has entered into a cooperation agreement, or based on any other legal ground, shall in any case be limited to the amount that the liability insurer of D&Z Domotica actually pays as a benefit under the liability insurance policy in the matter concerned (per instance of liability, per year of insurance cover), plus the amount of the deductible under that insurance policy.
- 5.13 All aforementioned limitations of D&Z Domotica’s liability do not apply in the event that the claimed Losses are the result of an intentional act or omission (in Dutch: “*opzettelijk handelen of nalaten*”), gross negligence (in Dutch: “*grove nalatigheid*”) and/or willful misconduct (in Dutch: “*bewuste roekeloosheid*”) of D&Z Domotica.
- 5.14 The Buyer will indemnify D&Z Domotica against all third-party claims regarding any harm/loss incurred, or to be incurred, by such third parties, such with due observance of the provisions of this clause.
- 5.15 All rights (or rights of claim) which a Buyer has against D&Z Domotica regarding delivered products will lapse (in Dutch: “*vervallen*”):
- if the Buyer has not instituted legal proceedings against D&Z Domotica by no more than six months after the Buyer became aware of (or should reasonably have become aware of) the Losses;
 - within nine months after the event causing the loss/harm occurred;
 - within nine months after receipt of the products delivered;
- such on pain of said claim becoming inadmissible.
- 5.16 The term for prescription (in Dutch: “*verjaring*”) of all claims (or rights of claim) and defenses of a Buyer against D&Z Domotica is twelve months.
- 5.17 D&Z Domotica shall not be liable for any delays or nonperformance directly or indirectly resulting from circumstances or causes beyond its reasonable control or influence (which also includes unforeseen circumstances that causes third parties – on who D&Z Domotica depends to perform correctly – to non-perform). Performance shall be postponed for the



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duration of such event of force majeure. If the event of force majeure lasts for three months or more, either party may terminate the contract, without being obliged to pay the other party any kind of compensation. D&Z Domotica shall, however, retain the right to receive payment for products already supplied and Services already provided.

CLAUSE 6. LONG-TERM RELATIONSHIPS

- 6.1 Without prejudice to the power to terminate (in Dutch: “ontbinden”) as laid down in Section 6:265 DCC, and in the absence of written agreements to the contrary, either party to a Continuing Performance Contract may cancel (in Dutch: “opzeggen”) such contract at any time – without any damages or other compensation being owed – with due observance of a reasonable term of notice of:
- two months, if the contract (including the term of notice) has been in place for no more than five years;
 - four months, if the contract (including the term of notice) has been in place for more than five years.
- 6.2 To the extent permitted by law and in the absence of written agreements between the parties to the contrary, upon the cancellation (in Dutch: “opzegging”) of a Continuing Performance Contract – regardless of the reason for said termination – a Buyer shall not have any right to any form of fee, compensation, payment or indemnity.

CLAUSE 7. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 7.1 All intellectual or industrial property rights to Deliverables delivered by D&Z Domotica to a Buyer accrue exclusively to D&Z Domotica or its licensors. Intellectual property rights, such as rights to specifications, photographs, designs, drawings, models, slogans, texts, descriptions, artistic products, artwork, either in their original form or after alteration, data, including all changes thereto, and other publicity materials, trade names and/or trade marks, etc., which D&Z Domotica provides to a Buyer will remain, in their entirety, the property of D&Z Domotica. The Buyer warrants and guarantees that it does not and will not infringe, in any way whatsoever, upon any intellectual property right held by D&Z Domotica or its licensors.
- 7.2 All competition-sensitive information or business secrets, in any form whatsoever, regarding D&Z Domotica and its products (including but not limited to price lists, client lists, product specifications, protocols, and price and innovation campaigns) that a Buyer obtains and/or examines in the context of a Contract or Continuing Performance Contract (or the performance thereof) is confidential (“**Confidential Information**”). The Buyer will observe strict confidentiality in respect of all Confidential Information when dealing with other parties, and will refrain from using, copying, or saving Confidential Information for any purpose other than that for which it was provided to the Buyer. The Buyer will always keep Confidential Information secure and will not retain it for any longer than reasonably necessary. The Buyer is not permitted to provide Confidential Information to third parties in any way, or to share it with, or otherwise disclose it to, third parties. The Buyer warrants and guarantees that he/she will duly comply with the duty of confidentiality laid down in this clause, subject to the proviso that this duty of confidentiality will not cover information that is generally known or which has been made public by D&Z Domotica, or to the effecting of notifications whose necessity is automatically clear from the context of the ordinary performance of a Contract.

CLAUSE 8. WARRANTY

- 8.1 D&Z Domotica represents and warrants that:
- all Services will be performed in a competent and professional manner, with such care and skills as is customary;
 - the Deliverables are in accordance with the applicable specifications, documentation and/or any other descriptions.
- 8.2 D&Z Domotica is not the manufacturer of any (part or component of any) product and therefore shall not be liable whatsoever in respect to any defect in any (part or component of any) product supplied by D&Z Domotica. The Buyer shall however have the benefit of all and any warranty or other term given by the involved manufacturer.
- 8.3 All possible (other) warranties or other terms in relation to any Deliverable supplied by D&Z Domotica or services/work performed by auxiliary persons, sub-contractors, independent contractors or other assisting third parties (in Dutch: “hulpverleners”) engaged by D&Z Domotica, are excluded.

CLAUSE 9. GENERAL PROVISIONS

- 9.1 If, in a given case, D&Z Domotica refrains from invoking an applicable provision in the General Terms and Conditions, this will not affect D&Z Domotica’s entitlement to invoke that provision or any other provision in a subsequent case.
- 9.2 D&Z Domotica is entitled to amend these General Terms and Conditions unilaterally from time to time.
- 9.3 Without the prior express written consent of D&Z Domotica, the Buyer may not and cannot, directly or indirectly, contribute, subcontract and/or assign or otherwise transfer to a third party any Contract or any engagement, right, obligation, claim, warranty or any other right – including rights of will (in Dutch: “wilsrechten”) – pursuant to (or arising out of) a Contract. Consequently no such transfer or contribution will have any legal effect; this Clause shall have property law consequences (in Dutch: “goederenrechtelijk effect”).
- 9.4 The applicable version of these General Terms and Conditions will always be that which applied on the date a Contract or Continuing Performance Contract was formed with the Buyer.
- 9.5 If there is a dispute regarding the interpretation or explanation of any provision of the General Terms and Conditions, the Dutch translation as included on several places in the text of these General Terms and Conditions, shall always take precedence and will be leading for the purposes of such interpretation.

CLAUSE 10. DISPUTES: APPLICABLE LAW, COMPETENT COURT, ARBITRATION

- 10.1 These General Terms and Conditions, all (Continuing Performance) Contracts, as well as any separate purchase or other contracts ensuing therefrom or any disputes and/or non-contractual obligations relating thereto, are governed exclusively by the laws of the Netherlands.
- 10.2 The applicability of the ‘United Nations Treaty on Contracts for the International Sale of Goods’ (CISG) – also known as the Vienna Sales Convention 1980 – is expressly excluded, including with regard to all (Continuing Performance) Contracts and all other (future) legal relations between a Buyer and D&Z Domotica.
- 10.3 Any disputes between D&Z Domotica and a Buyer ensuing from – or relating to – these General Terms and Conditions or any (Continuing Performance) Contract, will be submitted in the first instance exclusively – and thus to the exclusion of any other court – to the competent section of the Amsterdam District Court, unless mandatory law confers jurisdiction upon another instance.
- 10.4 Contrary to the provisions of Clause 10.3, only if and so far the Buyer is established (or has its principal place of business) in a non-EU Member State and D&Z Domotica shall act as plaintiff/claimant (in Dutch: “eiser”), D&Z Domotica will be exclusively entitled (in the form of a discretionary authority) to choose that any dispute as referred to in Clause 10.3 shall be settled in accordance with the most recent and then-applicable version of the ‘Arbitration Rules of the Netherlands Arbitration Institute’ (NAI) in Rotterdam, the Netherlands. Unless the parties shall agree otherwise at that time:
- the arbitral tribunal shall be composed of one arbitrator;
 - the arbitrator of the arbitral tribunal shall be appointed according to the ‘list procedure’ as laid down in the aforementioned Arbitration Rules;
 - the proceedings shall be conducted in the Dutch language;
 - the place of arbitration shall be Rotterdam;
 - the arbitral tribunal shall decide as ‘amiable compositeur’ (in Dutch: “goede mannen naar billijkheid”) with due observance of the rule of law (that being Dutch law).
 - consolidation of the arbitral proceedings with other arbitral proceedings, as provided for in Article 1046 of the Dutch Code of Civil Procedure and Article 39 of the Arbitration Rules of NAI, is excluded;
 - the arbitration decision shall not be subject to appeal.

CLAUSE 11 DATE AND SOURCE OF THE GENERAL TERMS AND CONDITIONS

- 11.1 These General Terms and Conditions were adopted on December 1st 2020 and can be accessed, printed and downloaded [here](#).