

The following terms and conditions govern your use of the VIVASAN services and the materials available therein.

1. DEFINITIONS

The following words shall mean:

- **Buyer:** Buyer
- **Conditions:** the terms and conditions set out in this document
- **Contract:** any contract between the Buyer and VIVASAN for the sale and purchase of the Goods.
- **Goods:** the goods that the Buyer agrees to purchase from VIVASAN
- **Price:** the price for the goods excluding carriage, packing and insurance and including VAT, shall be the price set out in the VIVASAN current price list at the date on which an order is made
- **Seller:** VIVASAN
- **Working Day:** Monday to Friday excluding bank and other public holidays

2. APPLICATION OF TERMS

- The Contract shall be on these Conditions to the exclusion of any other terms and conditions.
- Any order for Goods from the Buyer shall be deemed to be an offer to purchase the Goods subject to these Conditions.
- No terms or conditions endorsed upon, delivered with or contained in any Seller's/Sellers' purchase order, confirmation of order, specification or other document shall form part of the Contract. The Conditions shall not be varied unless any agreement to vary is recorded in writing and signed by the Seller and Buyer.
- No order placed by the Buyer will be accepted by the Seller until he/she/it/they have/has sent to the Buyer acknowledgement and acceptance of the order. Upon the Seller sending the acknowledgement and acceptance of the order, the Seller and the Buyer will have a binding contract between them.
- The Buyer warrants that all the details in the order are complete and accurate.
- The Conditions shall apply to the sale of all Goods. Save as has been specifically provided for in the Conditions, any representations relating to the Goods shall not be effective unless expressly agreed in writing and signed by both the Seller and the Buyer.

3. THE GOODS

- The Buyer acknowledges that they have entered into the Contract as a result of their inspection or knowledge of the Goods and not in reliance upon any description given by the Seller.
- All drawings, descriptive matter, specifications and advertising issued by the Seller are issued or published for the sole purpose of giving an approximate idea of the Goods described in them and shall not form part of the Contract.

4. **Â TITLE AND RISK**

- **Ï** Title and ownership to the Goods shall not pass from the Seller to the Buyer until the Seller has received the Price in full together with all other sums payable by the Buyer to the Seller.
- **Ï** Until title and ownership in the Goods has passed, the Buyer shall hold the Goods and each of them as bailey on behalf of the Seller and on a fiduciary basis retain the Goods separate from his/her/its/their other merchandise and possessions; and keep the Goods identifiably separate.
- **Ï** The Goods shall be at the risk of the Seller up until he/she/it/they give/gives notice that the Goods are available for collection and thereafter they shall be at the risk of the Buyer.

5. **Â PAYMENT**

- **Ï** All invoices are payable in EURO within 14 days days of the date of the invoice and in no circumstances may the Buyer make any deduction or withhold payment for any reason at all.
- **Ï** If the Buyer fails to pay the invoice by the due date and without prejudice to any rights of the Seller, the Buyer shall:

pay interest on any overdue amount from the date on which payment was due to the date of actual payment (whether before or after judgment) on a daily basis at a rate of 7% Interest over the base from the time quoted by the Bank and reimburse to the Seller all costs and expenses (including legal costs) incurred in the collection of any overdue amount.
- **Ï** The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, abatement or otherwise unless he/she/it/they has/have a valid court order requiring an amount equal to such deduction to be paid.
- **Ï** Until the Seller is in possession of cleared funds, the Buyer shall not be deemed to have made a payment.
- **Ï** If the Buyer does not make payments as required, the Seller may terminate the Contract.

6. **Â QUALITY**

- **Ï** If the Seller is not the manufacturer of the Goods, he/she/it/they shall transfer the benefit of any warranty or guarantee that he/she/it/they have/has been given.
- **Ï** The Buyer accepts that he/she/it/they buys or is deemed to buy the Goods as seen and in the condition they are at the time the order is placed.
- **Ï** The Seller warrants that the Goods shall be:
 - o **Â** of satisfactory quality within the meaning of the Sale of Goods Act 1979.
 - o **Â** reasonably fit for their purpose.
- **Ï** If any of the Goods do not conform with the warranty in condition. the Seller shall collect the Goods and may:

o Â carry out repairs to the Goods;

o Â replace the Goods or any defective part; or

o Â refund the price of such Goods.

• ¶ The Seller shall deliver any repaired or replacement Goods to the Buyer's premises. The Seller's liability for breach of warranty as set out in clause 8 shall be limited to complying with condition and shall not have further liability.

7. Â LIMITED WARRANTY

• ¶ All services and materials are provided on an "As Is", "As Available" basis and VIVASAN and each third party supplier of materials expressly disclaim all warranties, including the warranties of merchantability and fitness for a particular purpose.Â

8. Â LIMITATION OF LIABILITY

• ¶ The Seller shall not have any liability to the Buyer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of the Seller or in any other way out of or in connection with the performance or purported performance of or failure to perform the contract except:

§ Â for death or personal injury resulting from the Seller's negligence; and

§ Â as expressly stated in these conditions.

• ¶ The Seller shall not be liable for any defect arising from any design or specification provided or made by the Seller or if any adjustments, alterations or other work has been done to the Goods by any person except the Seller or his/her/its/their authorized agent.

• ¶ The Seller shall not be liable where any Goods are lost or damaged in transit. All claims by the Buyer shall be made against the carrier.

9. Â ASSIGNMENT

• ¶ The Seller may sub-contract the performance of any of its obligations under the Agreement to any parent, subsidiary or associated Company but the sub-contracting shall not relieve it of any liability under the Contract.

• ¶ The Seller and the Buyer shall not assign, delegate or otherwise deal with all or any of their rights and obligations under the Contract.

10. Â FORCE MAJEURE

• ¶ If the performance of the Contract or any obligation under it is prevented, restricted, or interfered with by reason of circumstances beyond the reasonable control of the Seller and he/she/it/they gives prompt notice to the Buyer, the Seller shall be excused from the performance to the extent of the prevention, restriction, or interference, but the Seller shall use his/her/its/their best endeavors to avoid or remove the causes of non-performance and shall continue performance under the contract with the utmost dispatch whenever the causes are

removed or diminished.

11. **Ā GENERAL**

- **Ā** If there is any conflict between these terms and specific terms appearing elsewhere (including local house rules) then the latter shall prevail.
 - **Ā** Each right or remedy that the Seller and the Buyer has under the Contract is without prejudice to any other right or remedy that may exist.
 - **Ā** In the event that any provision of the Contract is declared by any judicial or other competent authority to be void, void able, illegal, or otherwise unenforceable or if an indication to that effect is received by either the Buyer or the Seller from any competent authority, the Buyer and the Seller shall amend that provision in such reasonable manner as achieves the intention without illegality.
 - **Ā** If the Seller or the Buyer:Ā
 - **Ā** fails or delays to exercise any right or remedy, it shall not operate as a waiver of it; and
 - **Ā** partially exercises any right or remedy, neither of them shall be precluded from further exercising the right, remedy or other power.Ā
 - **Ā** Any waiver of a breach of any provision of the Contract shall not:
 - **Ā** be deemed to be a waiver of any subsequent breach or default; and
 - **Ā** affect the other terms of the Contract.
- **Ā** If any of these terms are determined to be illegal, invalid or otherwise unenforceable by reason of the laws of any state or country in which these terms are intended to be effective, then to the extent and within the jurisdiction in which that term is illegal, invalid or unenforceable, it shall be severed and deleted from these terms and the remaining terms shall survive, remain in full force and effect and continue to be binding and enforceable. These terms shall be governed by and interpreted in accordance with the laws of The Netherlands.Ā

12. **Ā Intellectual Property**

- **Ā** The names, images and logos identifying the VIVASAN, or third parties and their products and services are subject to copyright, design rights and trademarks of the VIVASAN and/or third parties. Nothing contained in these terms shall be construed as conferring by implication, estoppel or otherwise any license or right to use any trademark, patent, design right or copyright of the VIVASAN or any other third party.

13. **Ā MISCELLANEOUS**

- **Ā** These General Terms and Conditions, including the Additional Terms, may be changed from time to time as described below or by written agreement. Charges and payment terms may be changed in accordance with your applicable price schedule; all other provisions may be changed by VIVASAN immediately upon notice.Ā
- **Ā** VIVASANĀ may terminate the subscription for access to this website / web shop. The effective date of termination shall be ten days after the receipt of an appropriate notice of termination, unless a later date is specified in the notice. VIVASAN may suspend or discontinue

providing the Services to you without notice and pursue any other remedy legally available to it if you fail to comply with any of your obligations hereunder.

- ¶ The failure of the provider of the Services or any third party supplier of Materials to enforce any provision hereof shall not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.
- ¶ The subscribing organization or individual may not assign its rights or delegate its duties under the subscription to access the Services without the prior written consent of the provider of the Online Services.
- ¶ These General Terms and Conditions and the Additional Terms shall be governed by and construed in accordance with the laws of the Netherlands.Â