

# General Terms and Conditions Greenway Distribution

13 April 2018



[www.greenway-logistics.com](http://www.greenway-logistics.com)

General Terms and Conditions of Greenway Distribution,  
established at Spoorstraat 2, 3743 EG, in Baarn, the Netherlands,  
registered with the Chamber of Commerce under number 54397766.

## Definitions

In these General Terms and Conditions, the following terms are used as defined below, unless explicitly stated otherwise.

General Terms and Conditions:	The General Terms and Conditions as stated below.
Greenway Distribution:	Greenway Distribution, registered with the Chamber of Commerce under number 54397766.
Service:	All work, of whatever form, that Greenway Distribution has carried out for, or for the benefit of, the Client.
Reimbursement:	The financial reimbursement that is agreed with the Client for the performance of the assignment.
Assignment:	The contract of instruction to provide services.
Client:	The one who has accepted the validity of these General Terms and Conditions and given instructions for the provision of the Service.
Contract:	Any contract entered into between Greenway Distribution and the Client.

## Article 1 Scope

These General Terms and Conditions apply to every quotation and Contract entered into between Greenway Distribution and the Client, unless the parties are departed from the General Terms and Conditions explicitly and in writing.

These General Terms and Conditions are also applicable to contracts with Greenway Distribution for the implementation of which third parties must be involved. The applicability of any of the Client's purchasing conditions or other general terms and conditions is expressly excluded.

If one or more provisions of these General Terms and Conditions are void or voidable, the other provisions of these General Terms and Conditions remain in effect. In this event, Greenway Distribution and the Client will consult with each other to agree new provisions to replace the void or voided ones.

Departures from the Contract and the General Terms and Conditions are only valid if they are explicitly agreed with Greenway Distribution in writing. If Greenway Distribution does not always demand strict compliance with these conditions, this does not mean that provisions thereof do not apply, or that Greenway Distribution would in any way lose the right to demand strict compliance with the provisions of these conditions in other cases.

## **Article 2      Quotations**

Quotations should preferably be made in writing and/or electronic form, unless pressing circumstances make this impossible.

Quotations are valid for one month, unless another period for acceptance is stated in the quotation. If in the quotation a period for acceptance is stated the quotation will lapse after this period has expired.

Greenway Distribution cannot be held to its quotations if the Client, in accordance with the requirements of reasonableness and fairness and generally accepted standards, should have understood that the quotation or an element thereof contains a manifest fault or clerical error.

If the acceptance departs from the offer included in the quotation whether or not on points of minor importance, then Greenway Distribution is not bound by this acceptance. The Contract then does not come into being in accordance with this differing acceptance, unless Greenway Distribution indicates otherwise.

A composite quotation does not oblige Greenway Distribution to perform an element of the Assignment for a corresponding part of the stated price.

Quotations do not automatically apply to future orders or reorders.

## **Article 3      Formation and duration of the contract**

The Contract comes into being through the timely acceptance by the Client of Greenway Distribution's quotation.

The Contract will be concluded for an indefinite period, unless the nature of the Contract states otherwise or if parties have agreed otherwise explicitly and in writing.

If the Contract is concluded for a limited period the Contract shall automatically be renewed for one year after the ending of the contract period, unless the Client has terminated the contract.

## **Article 4      Ending of the contract**

Greenway Distribution and the Client can terminate the Contract at any time by mutual consent.

In the event that one of the parties becomes bankrupt, is placed under conservatorship or ceases the business, the other party has the right to end the Contract prematurely without the observance of a notice period. Both the Client and Greenway Distribution are entitled to terminate the Contract at any time, with the observance of a period of notice of one month.

## **Article 5**      **Amendments to the contract**

If, during the implementation of the Contract, it becomes apparent that it is necessary to amend or supplement the Contract to ensure its proper implementation, then Greenway Distribution will inform the Client of this as soon as possible. The parties will then amend the Contract in a timely manner and in mutual consultation.

If the parties agree that the Contract will be amended or supplemented, this can influence the time of the completion of the implementation. Greenway Distribution will inform the Client of this as soon as possible.

If the amendment or supplementation of the Contract will have financial, quantitative and/or qualitative consequences, then Greenway Distribution will inform the Client of this in advance.

If a fixed reimbursement and/or fee is agreed, then Greenway Distribution will indicate the extent to which the amendment or supplementation of the Contract will influence the price. In this event Greenway Distribution will attempt, as far as possible, to issue a quotation in advance.

Greenway Distribution may not make any additional charges if the amendment or supplementation is a consequence of circumstances that can be attributed to Greenway Distribution.

Amendments to the Contract originally entered into between the Client and Greenway Distribution are only valid from the time at which these amendments are accepted in writing by both parties by means of a supplementary or amended Contract.

## **Article 6**      **Implementation of the contract**

Greenway Distribution will implement the Contract to the best of its knowledge and ability, and in accordance with the requirements of good workmanship.

Greenway Distribution is entitled to arrange for certain work to be carried out by third parties. The applicability of articles 7:404, 7:407, paragraph 2 and article 7:409 of the Dutch Civil Code is explicitly excluded.

Greenway Distribution is entitled to implement the Contract in phases.

If the Contract is implemented in phases, Greenway Distribution is entitled to invoice and require payment for each implemented element separately. If and for as long as this invoice is not paid by the Client, Greenway Distribution is not obliged to implement the following phase, and is entitled to suspend the contract.

If the Contract is implemented in phases, Greenway Distribution is entitled to suspend the implementation of those elements that belong to the following phase or phases until the Client has approved in writing the results of the preceding phase.

The Client will issue all information or instructions that are necessary for the implementation of the Contract, or which the Client can be reasonably expected to understand are necessary for implementation of the Contract, to Greenway Distribution in a timely manner.

If the above-mentioned information and instructions are not issued, or not issued in a timely manner, then Greenway Distribution is entitled to suspend the implementation of the Contract. The additional expenses that are incurred through the delay will be borne by the Client.

## **Article 7      Reimbursement**

The Reimbursement and/or the fees are expressed in euros, exclusive of VAT and other government levies, unless indicated otherwise. If the Client has its place of business outside the Netherlands, a VAT of 0% will apply.

The Reimbursement is inclusive of travel, accommodation, packaging, delivery or transportation costs, unless indicated otherwise.

The Reimbursement is exclusive administration costs, unless indicated otherwise.

If there isn't a Reimbursement and/or fee expressly agreed, the Reimbursement and/or fee will be determined by the actual amount of hours and the usual hourly fee of Greenway Distribution.

Greenway Distribution will provide a statement of all associated costs, or provide information on the basis of which these costs can be calculated by the Client, in a timely manner before the Contract is entered into.

## **Article 8      Amendment of Reimbursement**

If Greenway Distribution agrees a fixed Reimbursement and/or fee when the Contract is entered into, then Greenway Distribution is entitled to increase this Reimbursement or fee, also when the Reimbursement or fee is not originally specified provisionally.

If Greenway Distribution has the intention of amending the Reimbursement and/or fee, it will inform the Client of this as soon as possible.

If the increase of the Reimbursement or fee takes place within three months of the Contract being entered into, the Client can terminate the Contract by means of a written statement, unless:

- the increase arises from a right of Greenway Distribution or an obligation resting upon Greenway Distribution in accordance with the law;
- the increase is due to a rise in the price of raw materials, wages etc. or on other grounds that could not reasonably have been foreseen when the Contract was entered into;
- Greenway Distribution is still prepared to implement the Contract on the basis of that which was originally agreed;
- it is stipulated that the implementation will be carried out more than three months after the Contract was entered into.

The Client is entitled to terminate the Contract if the Reimbursement or the fee are increased more than three months after the Contract was entered into, unless it is stipulated in the Contract that the implementation will be carried out more than three months after the Contract was entered into.

Greenway Distribution will inform the Client in the event of the intention to increase the Reimbursement or the fee, stating the extent of the increase and the date upon which it will take effect.

## **Article 9      Implementation periods**

The work will be carried out within a period stated by Greenway Distribution.

If a period is agreed or stated for the performance of particular work, then this period is only indicative and is not to be regarded as a strict deadline.

If Greenway Distribution requires data or instructions from the Client which are necessary for the execution of the Agreement, the execution period begins after the Client has provided these to Greenway Distribution.

In case of exceedance of an execution period, the Client must give Greenway Distribution notice of default in writing, giving Greenway Distribution a reasonable period to still execute the Agreement.

A notice of default is not necessary if the delivery has become permanently impossible or if it has become clear in a different way that Greenway Distribution will not fulfil its obligations under the Agreement. If Greenway Distribution fails to execute the Agreement within this period, the Client has the right to dissolve the Agreement without judicial intervention and/or to demand compensation.

## **Article 10**      **Payment**

Payment will take place by means of debt collection to a bank account specified by Greenway Distribution within the agreed period from the date of the sale or delivery, unless agreed otherwise. Transfer takes place through an invoice or bank transfer.

Payment must be made within 7 days of the invoice date, by means of debt collection in a manner to be specified by Greenway Distribution and in the currency in which the invoice is issued, unless agreed otherwise.

The Client is not authorised to deduct any amount from the payable amount by reason of a counterclaim made by the Client.

Greenway Distribution is entitled to invoice the Client for work carried out in the period in question.

Greenway Distribution and the Client may agree that payment be made in instalments in proportion with the progress of the work. If payment in instalments is agreed, the Client must make payment in accordance with the periods and percentages as established in the Contract.

Objections to the level of the invoice do not have the effect of suspending the payment obligations.

After the expiry of a period of 7 days after the invoice date, the Client will be, without a notice of default, by operation of law in default. The Client has to bear from the moment of default on the immediately claimable amount an interest at the rate of 2% per month, unless the statutory interest rate is higher.

In the event of bankruptcy, suspension of payment or placement under conservatorship, the amounts owed to Greenway Distribution and the obligations of the Client towards Greenway Distribution are immediately claimable.

## **Article 11**      **Collection costs**

If the Client is in default or in breach of the Contract in fulfilling its obligations (in a timely manner) then all reasonable costs incurred to obtain an out-of-court settlement are payable by the Client. The Client is in any event liable to pay the collection costs.

With regard to the extrajudicial (collection) charges, Greenway Distribution is entitled – in departure from article 6:96 paragraph 5 of the Dutch Civil Code and the Payment of Extrajudicial Collection Charges Decree – to a payment of 15% of the total outstanding principal sum, with a minimum of € 90,- for every invoice that is wholly or partly unpaid.

Any reasonable legal costs and execution costs incurred are also payable by the Client.

## Article 12      Suspension

If the Client does not fulfil an obligation arising from the Contract, or does not meet it fully or in a timely manner, then Greenway Distribution is entitled to suspend the corresponding obligation. In the event of partial or inadequate fulfilment, suspension is only permitted in so far as this is justified by the shortcoming.

Moreover, Greenway Distribution is entitled to suspend the fulfilment of the obligations if:

- after the Contract is entered into, Greenway Distribution becomes aware of circumstances that give good grounds to fear that the Client will not fulfil its obligations;
- the Client is requested, on entering into the Contract, to provide security for the fulfilment of its obligations arising from the Contract, and this security is not provided or is insufficient;
- circumstances arise of such a nature that fulfilment of the Contract is impossible, or that the unamended maintenance of the Contract cannot be reasonably required of Greenway Distribution.

Greenway Distribution reserves the right to claim compensation.

## Article 13      Termination

If the Client does not fulfil an obligation arising from the Contract, or does not meet it fully, in a timely manner or properly, then Greenway Distribution is entitled to terminate the Contract with immediate effect, unless the shortcoming, in view of its limited significance, does not justify the termination.

Moreover, Greenway Distribution is entitled to terminate the Contract with immediate effect if:

- after the Contract is entered into, Greenway Distribution becomes aware of circumstances that give good grounds to fear that the Client will not fulfil its obligations;
- the Client is requested, on entering into the Contract, to provide security for the fulfilment of its obligations arising from the Contract, and this security is not provided or is insufficient;
- due to a delay on the part of the Client, Greenway Distribution can no longer be required to fulfil the Contract under the originally agreed conditions;
- circumstances arise of such a nature that fulfilment of the Contract is impossible, or that the unamended maintenance of the Contract cannot be reasonably required of Greenway Distribution;
- the Client is declared bankrupt, submits an application for a suspension of payment, requests the application of debt rescheduling for natural persons or is served with a writ of sequestration on all or part of its property;
- the Client is placed under conservatorship;
- the Client deceases.

Termination will take place by means of a written declaration, without judicial intervention.



If the Contract is terminated, the Client's debts to Greenway Distribution become immediately due and payable.

If Greenway Distribution terminates the Contract on the above-mentioned grounds, Greenway Distribution is not liable for any costs or compensation. If the termination is attributable to the Client, the Client is liable for the damage suffered by Greenway Distribution.

#### **Article 14      Force majeure**

Breaches may not be attributed to Greenway Distribution or the Client if they are not their fault, or if they are not accountable by law, juristic act, or according to the generally accepted standards. In this case the parties are also not bound to fulfil the obligations arising from the Contract.

In these General Terms and Conditions, the term "force majeure" is defined as – in addition to what is understood in law and jurisprudence in this regard – all external causes, foreseen or unforeseen, upon which Greenway Distribution can exercise no influence and through which Greenway Distribution is not able to fulfil its obligations.

Circumstances regarded as resulting in force majeure include strikes, lockouts, fire, water damage, natural disasters or other external contingencies, mobilisation, war, traffic congestion, blockades, import or export restrictions or other government measures, stagnation or delay in the supply of raw materials or machinery components and lack of labour forces, as well as any circumstances through which normal business operations are impeded, as a result of which the fulfilment of the Contract by Greenway Distribution cannot be reasonably sought by the Client.

Greenway Distribution is also entitled to invoke force majeure if the circumstance that hinders (further) fulfilment of the Contract occurs after Greenway Distribution should have fulfilled its obligations.

In case of force majeure the parties are not obliged to proceed with the Contract, and are not bound to pay any compensation.

During the period that the force majeure continues, both Greenway Distribution and the Client can fully or partly suspend the obligations arising from the Contract. If this period lasts for longer than 2 months, both parties are entitled to terminate the Contract with immediate effect, by means of a written notification, without judicial intervention and without the parties being able to claim any damages.

If the situation of force majeure is of a temporary nature, Greenway Distribution reserves the right to suspend the agreed service for the duration of the situation of force majeure. In the event of permanent force majeure both parties are entitled to terminate the Contract without judicial intervention.

If at the time of the occurrence of force majeure Greenway Distribution has already partly fulfilled, or will fulfil, its obligations arising from the Contract, and independent value accrues to the part fulfilled or to be fulfilled, then Greenway Distribution is entitled to separately invoice the part already fulfilled or to be fulfilled. The Client is bound to pay this invoice as if there were a separate Contract.

#### **Article 15 Examination and claims**

The Client is obliged to examine the Service at the moment of performance, but in any case, within 5 days after the performance of the Service. The Client must examine whether the quality and quantity of the Service comply with what the parties agreed, at least meet the requirements that are common in trade.

Visible defects and shortcomings have to be reported within 3 working days after the performance of the Service in writing to Greenway Distribution.

Non-visible defects and shortcomings have to be reported within 3 working days after its discovery to Greenway Distribution.

The right to (partial) restitution of the price, repair or replacement or compensation lapses, if the defects will not be reported within the prescribed period, unless the nature of the Service states otherwise or from circumstances of the case a broader period arises.

Any shipping costs incurred for returning the defective Product Greenway Distribution will be reimbursed if the Client requested Greenway Distribution in writing to return the defective Product. Other costs than shipping costs will never be reimbursed by Greenway Distribution, unless agreed in writing. The shipping costs will never be reimbursed when the Client didn't ask Greenway Distribution in writing to send.

The payment obligation will not be suspended if the Client reports the defect to Greenway Distribution within the prescribed period.

#### **Article 16 Liability**

The implementation of the Contract is entirely at the risk and responsibility of the Client. Greenway Distribution is only liable for direct damage that has arisen through wilful recklessness or an intentional act or omission of Greenway Distribution.

The liability of Greenway Distribution is excluded for indirect damage, including in any event consequential damage, loss of profit, lost savings and loss due to business interruption, or immaterial damage to the Client.

Greenway Distribution is not liable for damage, of whatever nature, resulting from Greenway Distribution basing its actions upon inaccurate and/or incomplete information provided by the Client, unless this inaccuracy or incompleteness ought to have been known to Greenway Distribution.

Greenway Distribution is not liable for mutilation, destruction, theft or loss of data or documents.

If Greenway Distribution is liable for any damage, then the liability of Greenway Distribution is limited to an amount of € 25.000, or to the amount to which the insurance taken out by Greenway Distribution gives entitlement, with the deduction of the policy excess borne by Greenway Distribution under the terms of the insurance.

The Client must report the damage for which Greenway Distribution can be held liable to Greenway Distribution as soon as possible, but in any event within 10 days of the damage having arisen, on penalty of the forfeiture of any right to compensation for this damage.

Any liability claim against Greenway Distribution lapses within one year of the Client having become aware, or possibly reasonably having become aware, of the harmful event.

The limitations of the liabilities in this article will not apply if the damage is due to an intentional act or recklessness of Greenway Distribution or due to his supervisory subordinates.

#### **Article 17      Indemnity**

The Client indemnifies Greenway Distribution against any claims by third parties who suffer damage in connection with the implementation of the Contract which is attributable to the Client.

If Greenway Distribution may be sued for this reason, then the Client is bound to provide Greenway Distribution with both judicial and extrajudicial support. Furthermore, all costs and damage on the part of Greenway Distribution and third parties will be at the expense and risk of the Client.

#### **Article 18      Limitation period**

In departure from the legal limitation period, a limitation period of one year applies to all claims against Greenway Distribution and any third parties brought in by Greenway Distribution.

#### **Article 19      Intellectual property**

Greenway Distribution reserves the rights and powers accruing to it under the provisions of the Copyright Act and other intellectual property legislation and regulations.

Greenway Distribution reserves the right to utilise the knowledge acquired for the performance of the work and general information for other purposes and other work, in so far as no confidential information is hereby communicated to third parties.

## **Article 20      Confidentiality**

Both Greenway Distribution and the Client are obliged, for the duration of and after the termination of the Contract, to maintain confidentiality regarding all facts and particulars concerning the business which they know or can reasonably suspect are confidential. This duty of confidentiality also includes all details of employees, clients, commissioning bodies and other business contacts which are learned of by reason of the Assignment.

## **Article 21      Privacy**

The information and provided to Greenway Distribution by the Client will be treated carefully and confidentially by Greenway Distribution.

Greenway Distribution acts in compliance with the AVG which enters into effect on 25 May 2018. Greenway Distribution will on the basis of the AVG maintain a register of processing activities.

The Client has the rights of inspection, correction and removal of the transferred personal data.

When visiting the website, Greenway Distribution can collect information from the Client about the use of the website using cookies. The information Greenway Distribution collects using cookies can be used for functional and analytical purposes.

Greenway Distribution may only use the personal data of the Client in the context of the execution of its delivery obligation or the handling of a complaint. Greenway Distribution may only and exclusively use the personal data of the Client for necessary specific purposes.

Greenway Distribution is prohibited from lending out, renting, selling or otherwise sharing the personal data of the Client.

Greenway Distribution will not store the personal data longer than is necessary.

The Client is authorised to submit a complaint to the Personal Data Authority regarding his/her personal data. The Personal Data Authority is obliged to handle this complaint.

The Client agrees that Greenway Distribution will contact the Client for statistical studies or a customer satisfaction survey. If the Client does not wish to be contacted for studies, the Client can make this known.

## **Article 22      Newsletter**

The Client can sign up for the newsletter.

The newsletter will keep the Client informed of the latest news and the most recent developments.

The Client will receive the newsletter by e-mail.

The Client can opt out in writing of though a hyperlink of the newsletter at any time. In this case the Client will receive no more messages.

## **Article 23      Amendment of the general terms and conditions**

Greenway Distribution is entitled to amend the general terms and conditions unilaterally.

Amendments will also apply to Contract that are already concluded.

Greenway Distribution will inform the Client by e-mail about the amendments.

The amendments to the general terms and conditions will be in force thirty days after the Client is informed of the amendments.

If the Client does not agree with the announced amendments, the Client is entitled to terminate the Contract.

## **Article 24      Interpretation, translation**

As well as the original Dutch version of these General Terms and Conditions, there is another version of the General Terms and Conditions, translated into English.

The Dutch version of the General Terms and Conditions of Greenway Distribution is the authentic version. This version of the General Terms and Conditions will take precedence in the event of the explanation or interpretation of the General Terms and Conditions.

In the event of a difference in meaning or interpretation between the two versions, then the Dutch version of the General Terms and Conditions will prevail.

## **Article 25**      **Applicable law, disputes**

Dutch law is exclusively applicable to all legal relationships to which Greenway Distribution is a party. This also applies if an obligation is wholly or partly fulfilled outside of the Netherlands or if the Client has its place of business outside of the Netherlands.

The applicability of the Vienna Sales Convention (CISG) is excluded.

Disputes between Greenway Distribution and the Client will only be submitted to the competent court in the Utrecht district, unless the law mandatorily prescribes otherwise.

## **Article 26**      **Location**

These General Terms and Conditions are filed at the Chamber of Commerce under number 54397766.