

- 1. Applicability:**
1.1 These terms shall apply to any and all Fivestargrass' offers and sales agreements and to all agreements that may be consequent upon them.
1.2 The client's general terms shall not apply and are explicitly rejected.
- 2. Offers:**
2.1 Any and all oral and written offers shall be without engagement.
2.2 Should the client supply to Fivestargrass any data, drawings etc., Fivestargrass may assume that they are correct and Fivestargrass shall base its offer or quotation on such data, drawings etc.
2.3 Pictures, drawings, measurements, statement of weights and other data provided by Fivestargrass in offers, quotations, catalogues, price lists, datasheets, sample books, plans, calculations or otherwise shall not be binding on Fivestargrass.
2.4 Even if they have been accepted by trade agents, commercial travellers and other intermediaries and/or resellers, Fivestargrass shall be bound to orders only after having accepted and confirmed them in writing. In the event of a difference between Fivestargrass' confirmation and the client's order, the text of Fivestargrass' confirmation shall be applicable.
- 3. Intellectual property rights:**
3.1 Unless agreed otherwise, Fivestargrass shall retain the copyrights and all other industrial property rights in the offers made and the designs, pictures, drawings, (pilot) models, programs etc. provided by Fivestargrass.
3.2 The rights to the data referred to in sub-clause 1 shall remain Fivestargrass' property irrespective of whether costs have been charged to the client in respect hereof. Without the explicit permission of Fivestargrass, these data may not be copied, used or disclosed to third parties. Should this provision be violated, the client shall owe Fivestargrass a penalty of EUR 30,000.--. In addition to this penalty damages may be claimed by operation of the law.
3.3 The client must return the data provided to him as referred to in sub-clause 1 to Fivestargrass at the latter's first request within the period of time stated by Fivestargrass. Should this provision be violated, the client shall owe Fivestargrass a penalty of EUR 1,000.-- per day. In addition to this penalty damages may be claimed based on the law.
- 4. Advice, designs and materials:**
4.1 The client may not derive any rights to information and advice provided by Fivestargrass if such information and advice does not directly relate to the order.
4.2 The client indemnifies Fivestargrass for any and all claims by third parties in relation to the use of drawings, calculations, samples, models and the like provided by or on behalf of the client.
- 5. Prices:**
5.1 Should any increase or surcharge take effect in the period of time between the date of an offer and/or delivery on the freight and/or customs rates of goods or raw materials, or if the latter are obliged to charge Fivestargrass higher prices, as also if government measures should be announced, which might have consequences for Fivestargrass that may not be considered as normal trading risks, Fivestargrass shall be entitled to charge to the client corresponding surcharges on the prices of current orders.
- 6. Delivery, time of delivery:**
6.1 Goods shall be delivered by Fivestargrass ex works, unless agreed otherwise in writing. Should the client require another manner of transport, the relevant costs will be charged separately.
6.2 The time of delivery shall commence when Fivestargrass has received the signed order confirmation, all required data, definitive drawings etc., are in Fivestargrass' possession, the agreed (instalment) payment has been received and the necessary conditions for carrying out the order have been fulfilled.
6.3 Fivestargrass shall establish the time of delivery by approximation.
6.4 When establishing the time of delivery, Fivestargrass assumes that Fivestargrass will be able to carry out the order under the circumstances that are known to Fivestargrass at such time.
6.5
6.5.1 Should different circumstances occur than the ones Fivestargrass was cognizant of when establishing the time of delivery, Fivestargrass may extend the time of delivery with the period of time required for carrying out the order under these different circumstances. If Fivestargrass should be unable to fit the work into Fivestargrass' planning, they will be completed as soon as Fivestargrass' planning allows thereof.
6.5.2 If it is a matter of weather in which no work can be done, the time of delivery will be extended with the time of interruption occurring as a consequence of such weather.
6.6 Late delivery for whatever reason shall never entitle the client to damages, cancellation of the agreement or failure to perform any obligation that would arise for the client under the agreement.
- 7. Transfer of risk:**
7.1 In accordance with the provisions set out in clause 6.1 Fivestargrass may also, in consultations with the client, agree that the client will take care of the transport or Fivestargrass will arrange transport in the name of the client. In both instances, the risk of loading, transport and unloading shall vest in the client. He is presumed to take out insurance to cover these risks
- 8. Payment:**
8.1 Payment must be effected by remittance to or payment into Fivestargrass' bank account within the period of time indicated on its confirmation of order, without any deduction, discount, compensation or set off.
8.2 Unless agreed otherwise, payment shall be effected as follows:
8.2.1 cash in case of sales at the counter;
8.2.2 when payment in instalments has been agreed:
 - 50% of the total price upon placing the order,
 - 25% of the total price 30 days after delivery of the goods;
 - 25% of the total price 60 days after delivery of the goods.
8.2.3 In all other cases within 30 days after the date of the invoice.
8.3 In the event of partial delivery, Fivestargrass shall be entitled to charge the client separately for each partial delivery and to require payment for such delivery.
8.4 Reservation is made for C.O.D-delivery.
8.5 Whenever payment has not been effected within the period agreed therefore, the client shall forthwith owe interest to Fivestargrass. Such interest shall amount to 2% per month, but it shall be equal to the statutory interest when the latter is higher. When charging interest, part of a month shall be considered to be a full month. Interest shall be charged on a monthly basis.
8.6 The client shall pay all costs with respect to collecting costs both at law and otherwise including those of Fivestargrass' lawyer and procurator litis. The out-of-court collecting costs shall amount – excluding any bill and protest charges – to at least 15% of the amount to be collected with a minimum of EUR 250.--.
8.7 Both during and after the coming into being of the agreement Fivestargrass reserves the right to require immediate payment or security for the payment of the purchase price, the costs hereof shall be borne by the client.
8.8 When he has not lodged a written protest within 14 days, the client shall be considered to have acknowledged the invoice received as correct and payable.
- 9. Liability:**
9.1 Fivestargrass shall only be liable under the following conditions:
9.1.1 For damage sustained by the client and/or third parties that is the direct consequence of a failure by Fivestargrass, and that is attributable to intent or gross negligence from Fivestargrass or any of its employees;
9.1.2 Such liability shall only relate to direct damage and consequently not to indirect damage such as consequential loss and operational loss;
9.1.3 To the extent that Fivestargrass would be liable for damage under this provision or on any other ground, Fivestargrass shall never be bound to pay any more damages than the actual amount paid to it in the relevant case by its insurer on the basis of its third-party liability insurance.
- 10. Complaints:**
10.1 On pain of being forfeited, complaints shall have been lodged in writing with Fivestargrass as soon as possible but by no later than within 8 days after delivery of the goods. Complaints that have reached Fivestargrass at a later time or in another manner or that have been lodged with intermediaries shall be void and do not have any legal consequence as regards Fivestargrass.
10.2 Should a complaint be justified, after analysis by Fivestargrass, Fivestargrass shall, at its option, either replace the goods to which the complaint related by similar goods at no costs, or parts of these goods, or discharge the client in full or in part of his obligation to pay the invoice relating to such goods.
10.3 No complaints shall be accepted in relation to goods that have been used, processed or cut up in whole or in part.
10.4 Returning of goods may only be effected after having obtained Fivestargrass' written approval and its shall be effected at the client's expense and risk.
10.5 Fulfillment of Fivestargrass' guarantee as set out in clause 10.2 shall be the sole and complete compensation of damage. Any other claim for damages shall be excluded.
- 11. Guarantee:**
11.1 To the extent that a guarantee has been agreed between Fivestargrass and the client, the following shall be applicable. Fivestargrass' obligation during the guarantee period shall be limited to the replacement or repair of the product or part thereof delivered by Fivestargrass to the client, which should show a defect during the guarantee period, unless such defect should be attributable to the client's intent or gross negligence such as the non-compliance with the product's instructions for use, provided by Fivestargrass. To the extent that the client should suffer damage in addition to the defect to the product, clause 9 shall be applicable to such damage.
- 12. Tolerances:**
12.1 With respect to the weight of the goods ordered a tolerance of 10% over and under the agreed gram weight per m² shall be admissible. Furthermore, Fivestargrass reserves the right to deliver 5% more or less than the quantity ordered.
- 13. Orders on call:**
13.1 Delivery must be taken of orders on call within the period of time agreed upon the purchase. In default thereof, Fivestargrass shall be entitled to demand payment of the full remainder of the purchase price before making further deliveries.
- 14. Reservation of title and right of pledge**
14.1 After delivery Fivestargrass shall remain the full owner of the goods delivered for as long as the client:
14.1.1 fails or will fail in the performance of his obligations under this agreement or other similar agreements;
14.1.2 did not pay or will not pay in full for the work performed or to be performed under such agreements;
14.1.3 has failed to pay any claims resulting from the non-performance of the said agreements, such as damages, penalty, interest and costs.
14.2 For as long as title in the goods delivered has been reserved, the client may not encumber the same beyond the normal conduct of his business.
14.3 After Fivestargrass invoked its reservation of title, Fivestargrass may take back the goods delivered. The client shall allow Fivestargrass access to the spot where the goods are situated.
14.4 Where Fivestargrass is unable to invoke its reservation of title because the goods have been confused, deformed or acceded, the client shall be obliged to pledge the newly formed goods to Fivestargrass.
14.5 The client shall be obliged to take out proper insurance against damage and theft in relation to the goods that are subject to Fivestargrass' reservation of title.
- 15. Cancellation**
15.1 Without prejudicing any other right Fivestargrass may have, Fivestargrass has the right, should Fivestargrass be prevented by circumstances beyond its control to perform the agreement, to suspend delivery until the said circumstances have discontinued or a period of 2 months has passed, or, at its option, to cancel the agreement or the non-performed part thereof in its entirety or in part without the intervention of the court, without Fivestargrass being bound to pay any damages or provide any guarantee.
15.2 Circumstances beyond Fivestargrass' control shall be understood to mean any unforeseen circumstance as a result whereof fulfillment of the agreement cannot reasonably be expected by the client.
15.3 Should the client fail to fulfil, or to fulfil properly or in good time any obligation arising under the agreement, as also in the event of his bankruptcy, suspension of payments or winding-up of his business, he shall be deemed to be in default by operation of law and Fivestargrass shall have the right, without any notice of default or intervention of the court being required, to suspend the performance of all agreements concluded with the client or to cancel them in their entirety or in part, at Fivestargrass' option, without the latter being obliged to pay any compensation. Should Fivestargrass cancel the agreement(s), Fivestargrass shall have the right to take back as its property the goods delivered that have been left unpaid, without prejudice to its right to damages.
- 16. Applicable law and jurisdiction:**
16.1 Any and all agreements and obligations arising under such agreements between Fivestargrass and the client shall exclusively be governed by the law of the Netherlands.
16.2 The Vienna Convention on the International Sale of Goods (C.I.S.G.) shall not be applicable, neither shall any other international agreement, exclusion whereof is permissible.
16.3 The Court in the district of Zutphen, having jurisdiction under the law of the Netherlands, shall be the court having exclusive jurisdiction to take cognizance of disputes between Fivestargrass and the client.
- 17. Final provisions:**
17.1 The Dutch text of Fivestargrass' general terms of sale and delivery shall prevail over any translation thereof.
17.2 These terms shall supersede all previous ones.
17.3 Fivestargrass shall have authority to alter the present terms, after which the altered terms shall be applicable between the parties as of the date they were sent to the client.