

Terms and Conditions

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Article 1 - Definitions

In these conditions, the following definitions apply:

1. Reflection period: the period in which the consumer can make use of his right of withdrawal;
2. Consumer: the natural person who does not act in the exercise of profession or business and enters into a distance contract with the entrepreneur;
3. Day: calendar day;
4. Duration of transaction: a distance contract relating to a series of products and / or services, of which the delivery and / or purchase obligation is spread over time;
5. Durable medium: any means that enables the consumer or entrepreneur to store information that is addressed to him personally, in a way that makes future consultation and unaltered re-production of the stored information possible.
6. Right of withdrawal: the possibility for the consumer to withdraw from the distance contract within the reflection period;
7. Model form: the model form for withdrawal that the entrepreneur provides that a consumer can fill in when he wants to make use of his right of withdrawal.
8. Entrepreneur: the natural or statutory person who offers products and / or services to consumers at a distance;
9. Distance contract: an agreement whereby, within the framework of a system organized by the entrepreneur for distance selling of products and / or services, up to and including the conclusion of the agreement, only one or more techniques for distance communication are used;
10. Technique for distance communication: means that can be used for concluding a contract, without the consumer and entrepreneur being in the same room at the same time.
11. Terms and Conditions: the present General Terms and Conditions of the entrepreneur.

Article 2 - Identity of the entrepreneur

Companyname : Digital License - NH Installatiebedrijf B.V.

Street : Poortweg 4a

Postalcode : 2612PA

City : Delft

Country : The Netherlands

Telephone number: +31 15 2510 449

E-mail address: info@digitallicense.nl

Chamber of Commerce number: 68151136

VAT identification number: NL857322564B01

If the activity of the entrepreneur is subject to a relevant authorisation regime: the information about the supervisory authority:

If the entrepreneur has a regulated profession:

- *the professional association or professional organisation to which he is affiliated;*
- *the professional title, the place in the EU or the European Economic Area where it is awarded;*
- *a reference to the professional rules that apply in the Netherlands and instructions on where and how these professional rules are accessible.*

Article 3 - Applicability

1. These general terms and conditions apply to every offer from the entrepreneur and to every distance contract and orders between entrepreneur and consumer.
2. Before the distance contract is concluded, the text of these general terms and conditions will be made available to the consumer. If this is not reasonably possible before the distance contract is concluded, it will be indicated that the general terms and conditions can be viewed at the entrepreneur and they will be sent free of charge as soon as possible at the request of the consumer.
3. If the distance contract is concluded electronically, by derogation from the previous paragraph and before the distance contract is concluded, the text of these general terms and conditions can be made available electronically to the consumer in such a way that the consumer can easily store it on a durable medium. If this is not reasonably possible, before the distance contract is concluded, it will be indicated where the general terms and conditions can be consulted electronically and that at the request of the consumer they will be sent free of charge by electronic means or otherwise.
4. In case the specific product or service conditions apply in addition to these general terms and conditions, the second and third paragraphs shall apply mutatis mutandis and the consumer may in the event of conflicting general terms and conditions always invoke the applicable provision that

is most favorable to him.

5. If one or more provisions in these general terms and conditions at any time are wholly or partially void or destroyed, then the contract and these conditions remain intact and the concerning stipulation will be replaced by a provision that the intention of the original approaches as much as possible.
6. Situations that are not regulated in these general terms and conditions must be assessed 'to the spirit' of these general terms and conditions.
7. Obscurities about the explanation or content of one or more provisions of our terms and conditions, should be explained 'to the spirit' of these terms and conditions.

Article 4 - The offer

1. If an offer has a limited period of validity or is made subject to conditions, this will be explicitly stated in the offer.
2. The offer is without obligations. The entrepreneur is entitled to amend and adjust the offer.
3. The offer contains a complete and accurate description of the offered products and / or services. The description is sufficiently detailed to make a proper assessment of the offer possible by the consumer. If the entrepreneur uses images, these are a true reflection of the offered products and / or services. Obvious mistakes or errors in the offer do not bind the entrepreneur.
4. All images, specifications and information in the offer are indicative and can not lead to compensation or dissolution of the contract.
5. Products with images are a true reflection of the products offered. Entrepreneur can not guarantee that the displayed colors exactly match the real colors of the products.
6. Each offer contains such information that is clear to the consumer on what rights and obligations are attached to the acceptance of the offer. This concerns in particular:

- the price including taxes;
- the possible costs of shipping;
- the way in which the contract will be concluded, and which acts are necessary for this;
- whether or not the right of withdrawal applies;
- the method of payment, delivery and execution of the contract;
- the period for accepting the offer, or the period within which the entrepreneur guarantees the price;
- the amount of the tariff for distance communication if the costs of using the technique for distance communication are calculated on a basis other than the regular basic tariff for the used means of communication
- whether the agreement is filed after the conclusion and, if so, how it can be consulted by the consumer;
- the way in which the consumer, prior to concluding the contract, can check the data provided by him under the contract and repair it if necessary;
- any other languages in which, in addition to Dutch, the contract can be concluded;
- the codes of conduct to which the entrepreneur has subjected himself and the way in which the consumer can consult these codes of conduct electronically; and
- the minimum duration of the distance contract in case of a duration of transaction.
- Optional: available sizes, colours, type of materials.

Article 5 - The contract

1. The contract is, without prejudice to the provisions of paragraph 4, concluded at the moment of acceptance by the consumer of the offer and the fulfillment of the corresponding conditions.
2. If the consumer has accepted the offer electronically, the entrepreneur will immediately confirm the receipt of the acceptance of the offer electronically. As long as the receipt of this acceptance has not been confirmed by the entrepreneur, the consumer can dissolve the agreement.
3. If the contract is concluded electronically, the entrepreneur will take appropriate technical measures and organisational measures to secure the electronic transfer of data and he will ensure a secure web environment. If the consumer can pay electronically, the entrepreneur will observe appropriate security measures.
4. The entrepreneur can - within the legal frameworks - inform whether the consumer can meet his payment obligations, as well as all those facts and factors that are important for a responsible conclusion of the distance contract. If the entrepreneur based on this investigation has good reasons not to enter into the agreement, he is entitled to refuse an order or request, and he is entitled to attach special conditions to the execution.
5. The entrepreneur will send the following information with the product or service, in writing or in such a way that it can be stored by the consumer in an accessible manner on a durable medium:
 - a. the visiting address of the business location of the entrepreneur where the consumer can go to with complaints;
 - b. the conditions under which and the manner in which the consumer can make use of the right of withdrawal, or a clear statement regarding the exclusion of the right of withdrawal;
 - c. the information about guarantees and the existing service after purchase;
 - d. the information included in article 4 paragraph 3 of these conditions, unless the entrepreneur has already provided this information to the consumer before the execution of the contract;
 - e. the requirements for terminating the contract if the contract has a duration of more than one year or is indefinite.
6. In case of an extended transaction, the provision in the previous paragraph only applies to the first delivery.
7. Each contract is concluded under the suspensive conditions of sufficient availability of the products concerned.

Article 6 - Right of withdrawal

When delivering products:

1. When purchasing products, the consumer has the option to terminate the contract without giving any reasons within 14 days. This reflection period commences on the day following the receipt of the product by the consumer or a representative who is pre-designated by the consumer and who is announced to the entrepreneur.
2. During the reflection period, the consumer will handle the product and packaging carefully. He will only unpack or use the product to the extent that is necessary to assess whether he wishes to keep the product or not. If he makes use of his right of withdrawal, he will return the product with all accessories and - if reasonably possible - in the original condition and packaging to the entrepreneur, in accordance with the reasonable and clear instructions provided by the entrepreneur.
3. When the consumer wishes to make use of his right of withdrawal, he is obliged to announce this to the entrepreneur within 14 days after the receipt of the product. The consumer must announce this by means of the model form. After the consumer has announced that he wishes to make

use of his right of withdrawal, the customer must return the product within 14 days. The consumer must prove that the delivered goods have been returned on time, for example by means of a proof of shipment.

4. If the customer has not announced that he wishes to make use of his right of withdrawal after the expiry of the periods mentioned in paragraphs 2 and 3, or the consumer has not returned the product to the entrepreneur, the purchase is a fact.

When delivering services:

5. When providing services, the consumer has the option to terminate the contract without giving any reasons for at least 14 days, starting on the day of concluding the contract.

6. In order to make use of his right of withdrawal, the consumer will focus on the reasonable and clear instructions provided by the entrepreneur with the offer and / or at the latest upon delivery.

Article 7 - Costs in case of withdrawal

1. If the consumer makes use of his right of withdrawal, the the consumer will bear the costs of returning the goods.

2. If the consumer has paid an amount, the entrepreneur will refund this amount as soon as possible but no later than 14 days after the cancellation. However, the condition is that the product has already been received by the merchant or that conclusive proof of the complete return can be submit-ted. Repayment will be made via the same payment method used by the consumer, unless the consumer explicitly authorizes another payment method.

3. In the event of damage to the product due to careless handling by the consumer himself, the consumer is liable for the depreciation of the product.

4. The consumer can not be held liable for the depreciation of the product if the entrepreneur does not provide all legally required information about the right of withdrawal, this should be done before the conclusion of the sales contract.

Article 8 - Exclusion of right of withdrawal

1. The entrepreneur can exclude the right of withdrawal of the consumer for products as described in paragraph 2 and 3. The exclusion of the right of withdrawal only applies if the entrepreneur has clearly stated this in the offer, at least in time for the conclusion of the contract.

2. Exclusion of the right of withdrawal is only possible for products:

- a. that have been created by the entrepreneur in accordance with the specifications of the consumer;
- b. that are clearly personal in nature;
- c. which can not be returned due to their nature;
- d. that can spoil or age quickly;
- e. of which the price is subject to fluctuations in the financial market on which the entrepreneur has no influence;
- f. for loose newspapers and magazines;
- g. for audio and video recordings and computer software of which the consumer has broken the seal.
- h. for hygienic products of which the consumer has broken the seal.

3. Exclusion of the right of withdrawal is only possible for services:

- a. regarding accommodation, transport, restaurant services or to perform leisure activities on a certain date or during a certain period;
- b. of which the delivery commenced with the express consent of the consumer before the reflection period has expired;
- c. regarding bets and lotteries.

Article 9 - The price

1. During the period mentioned in the offer, the prices of the offered products and / or services will not be increased, except for price changes due to changes in VAT rates.

2. Contrary to the previous paragraph, the entrepreneur can offer products or services with variable prices, in case of prices that are subject to fluctuations in the financial market and on which the entrepreneur has no influence. This link to fluctuations and the fact that any mentioned prices are target prices are mentioned in the offer.

3. Price increases within 3 months after the conclusion of the contract are only permitted if they are the result of statutory regulations or provisions.

4. Price increases from 3 months after the conclusion of the contract are only permitted if the entre-preneur has stipulated this and:

- a. *they are the result of statutory regulations or stipulations; or*
- b. *the consumer has the authority to terminate the contract with effect from the day on which the price increase starts.*

5. The prices mentioned in the offer of products or services include VAT.

6. All prices are subject to printing errors. No liability is accepted for the consequences of printing er-rors. In case of printing errors, the entrepreneur is not obliged to deliver the product at the mistaken price.

Article 10 - Conformity and Warranty

1. The entrepreneur guarantees that the products and / or services comply with the contract, the specifications stated in the offer, the reasonable requirements of virtue and / or usability and the existing statutory provisions and / or government regulations on the date of the conclusion of the contract. If agreed, the entrepreneur also guarantees that the product is suitable for other than normal use.

2. A warranty provided by the entrepreneur, manufacturer or importer does not affect the statutory rights and claims that the consumer can assert against the entrepreneur on the basis of the contract.

3. Any defects or incorrectly delivered products must be reported to the entrepreneur in writing within 4 weeks after delivery. Return of the products must be in the original packaging and in a new condition.

4. The warranty term of the entrepreneur is consistent with the warranty term of the manufacturer. The entrepreneur is never responsible for the ultimate suitability of the products for each individual application by the consumer, nor for any advice regarding the use or application of the products.

5. The warranty does not apply if:

- The consumer has repaired the delivered products himself and / or processed or if the consumer has it repaired and / or processed by third parties;
- The delivered products are exposed to abnormal conditions or otherwise careless handling or contrary to the instructions of the entrepreneur and / or are handled on the packaging;

- The defect in whole or in part is the result of regulations that the government has made or will make regarding the nature or the quality of the materials used.

Article 11 - Delivery and execution

1. The entrepreneur will take the most possible care when receiving and executing orders of products and when assessing applications for the provision of services.
2. The place of delivery is the address that the consumer has announced to the company.
3. With due regard for the provisions in paragraph 4 of this article, the company will execute accepted orders expeditiously but no later than 30 days, unless the consumer has agreed to a longer delivery period. If the delivery is delayed, or if an order can not or only partially be executed, the consumer will receive a notification of this no later than 30 days after he has placed the order. In that case, the consumer has the right to terminate the contract without any costs. The consumer is not entitled to a compensation.
4. All delivery terms are indicative. The consumer can not derive any rights from any periods mentioned. Exceeding a term does not entitle the consumer to a compensation.
5. In case of dissolution in accordance with paragraph 3 of this article, the entrepreneur will refund the amount that the consumer has paid as soon as possible but no later than 14 days after termination.
6. If the delivery of an ordered product appears to be impossible, the entrepreneur will endeavor to make a replacement article available. At the latest upon delivery, it will be stated in a clear and comprehensible manner that a replacement item will be delivered. For replacement items, the right of withdrawal can not be excluded. The costs of any return shipment will be borne by the entrepreneur.
7. The risk of damage and / or loss of products rests with the entrepreneur until the moment of delivery to the consumer or a pre-designated representative that is announced to the entrepreneur, unless expressly agreed otherwise.

Article 12 - Duration of transactions: duration, cancellation and extension

Cancellation

1. The consumer can terminate a contract that has been concluded for an indefinite period and which extends to the regular delivery of products (including electricity) or services, at any time with due regard for the agreed cancellation rules and a period of notice of up to one month.
2. The consumer can terminate a contract that has been concluded for a definite period and which extends to the regular delivery of products (including electricity) or services, at any time by the end of the stipulated term, with due regard for the agreed cancellation rules and a period of notice of at most one month.
3. The consumer may, in the agreements that are mentioned in the previous paragraphs:
 - cancel at any time and not be limited to termination at a specific time or in a given period;
 - at least cancel in the same way as they were entered into by him;
 - always cancel with the same period of notice as the entrepreneur has stipulated for him-self.

Extension

4. A contract that has been concluded for a definite period and that extends to the regular delivery of products (including electricity) or services, may not be tacitly extended or renewed for a fixed term.
5. Contrary to the previous paragraph, a contract that has been concluded for a definite period and which extends to the regular delivery of daily papers, newspapers and magazines may be tacitly extended for a fixed term of a maximum of three months, if the consumer can cancel this extended contract before the end of the extension with a period of notice of no more than one month.
6. A contract that has been concluded for a definite period and that extends to the regular delivery of products or services may only be tacitly extended for an indefinite period if the consumer may cancel at any time with a period of notice of no more than one month and a period of notice of at most three months in case the contract extends to the regular, but less than once a month, delivery of daily papers, newspapers and magazines.
7. A contract of limited duration of the regular delivery of daily papers, newspapers and magazines (trial or introductory subscription) can not be tacitly continued and ends automatically after the trial or introductory period.

Duration

8. If a contract has a duration of more than one year, the consumer may terminate the contract at any time with a period of notice of no more than one month, unless the reasonableness and fairness oppose cancellation before the end of the agreed term.

Article 13 - Payment

1. Unless otherwise agreed, the amounts owed by the consumer must be paid within 7 working days after the commencement of the reflection period as referred to in article 6 paragraph 1. In case of a contract to provide a service, this period shall start after the consumer has received the confirmation of the contract.
2. The consumer has the duty to report inaccuracies in provided or stated payment details to the entrepreneur without delay.
3. In case of default by the consumer, the entrepreneur has the right, subject to statutory restrictions, to charge the reasonable costs that were announced prior to the consumer.

Article 14 - Complaints procedure

1. The entrepreneur has a well-publicized complaints procedure and handles the complaint in accordance with this complaint's procedure.
2. Complaints about the execution of the contract must be submitted fully and clearly described to the entrepreneur within 7 days, after the consumer has discovered the defects.
3. Complaints submitted to the entrepreneur will be answered within a period of 14 days from the date of receipt. If a complaint requires a foreseeable longer processing time, the entrepreneur will respond within the period of 14 days with a notice of receipt and an indication when the consumer can expect a more detailed answer.
4. If the complaint can not be resolved by mutual agreement, a dispute arises that is susceptible to the dispute settlement.
5. In case of complaints, a consumer must first turn to the entrepreneur. If the webshop is affiliated with Stichting WebwinkelKeur and if the complaints can not be resolved by mutual agreement, the consumer should turn to Stichting WebwinkelKeur (www.webwinkelkeur.nl), which will mediate free of charge. Check whether this webshop has a running membership via <https://www.webwinkelkeur.nl/leden/>. If there is not a solution found by then, the consumer has the opportunity to have his complaint dealt with by the arbitration committee appointed by Stichting WebwinkelKeur, the decision of this is binding and both entrepreneur and consumer must agree with this binding decision. There are costs

associated with submitting a dispute to the arbitration committee that must be paid by the consumer to the relevant committee. It is also possible to file complaints via the [European ODR platform](#).

6. A complaint does not suspend the obligations of the entrepreneur, unless the entrepreneur indicates otherwise in writing.

7. If a complaint is found to be well-founded by the entrepreneur, the entrepreneur will replace or repair the products to the consumer its choice or the delivered products free of charge.

Article 15 - Disputes

1. Contracts between the entrepreneur and the consumer to which these general terms and conditions apply are governed exclusively by Dutch law. Even if the consumer lives abroad.

2. The Vienna Convention on Contracts for the International Sale of Goods does not apply.

Article 16 - Additional or deviating provisions

Additional or deviating provisions from these terms and conditions may not be at the expense of the consumer and must be recorded in writing or in such a way that they can be stored by the consumer in an accessible manner on a durable medium.

For some products a telephone activation is required because they have been used before can assume that these are 100% Legitimate product codes

From the [press release](#): An author or software can not oppose the resale of his 'used' licenses. The exclusive right of distribution of a computer program is exhausted on its first sale.

Answer:

1. Article 4 (2) of Directive 2009/24 / EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs must be interpreted as meaning that the distribution right for a copy of a computer program is exhausted if the holder of the copyright that has allowed - possibly free of charge - downloading of that copy of the internet on a data carrier, against payment of a price by which he can receive a payment corresponding with the economic value of the copy of the work belonging to him, also a right of use for has granted that copy without limitation in time.

(2) Articles 4 (2) and 5 (1) of Directive 2009/24 must be interpreted as meaning that, in the event of the resale of a user license requiring the resale of a copy of a copy of a copy of a computer program, which license was initially granted to the first acquirer by that rightful claimant without any time limit on payment of a price with which the latter should be able to receive a remuneration corresponding to the economic value of that copy of his work; any subsequent acquirer of that license may rely on the exhaustion of the distribution right under Article 4 (2) of that directive and may therefore be regarded as legitimate purchasers of a copy of a computer program within the meaning of Article 5 (1), of that Directive and the reproduction right provided for in the latter provision.

Preliminary questions.

(1) Must the person who is entitled to expire the right to exercise control over the distribution of a copy of a computer program as a 'lawful transferee' within the meaning of Article 5 (1) of Directive 2009/24 [...]?

(2) If the first question is answered in the affirmative, the right to control the distribution of a copy of a computer program in accordance with Article 4 (2) ... of Directive 2009/24 ... does not apply. if the transferee has made the copy - with the permission of the rightful claimant - by downloading this copy of the internet on a data medium?

(3) If the second question is also answered in the affirmative, the person who has obtained a 'second-hand' software license with a view to making a copy of the computer program as a 'legitimate acquirer' in accordance with Article 5 (1) and Article 4 (2) [...] of Directive 2009/24 ... invoke the lapse of the right to control the distribution of the copy of the computer program produced by the first acquirer with the consent of the the rightful owner has been created by downloading this copy of the internet on a data carrier, in case the first acquirer has deleted his copy or no longer uses it?

On other blogs:

[1709blog](#) (UsedSoft ruling: exhaustion rules okay)

[Bird & Bird](#) (ECJ ruling on "UsedSoft" case)

[DeBrauw Legal Alert](#) (UsedSoft v Oracle opens up market for second-hand software licenses)

[Dirkzwagerieit](#) (Trade in licenses downloaded software allowed)

[Holla lawyers](#) (second hand software: it is possible!)

[ICT ~ Office](#) (European judge opens the door to trade in second-hand software)

[ICTRecht](#) (Guest post: Videogames after Usedsoft v. Oracle)

[IE-Forum](#) (Application UsedSoft-judgment in paint mixing software PPG)

[IE-Forum](#) (Application Usedsoft case in paint mixing software: too short through the bend?)
[IP-Watch](#) (Form Over Function - The ECJ Rules On Software Copyright)
[ITenRecht](#) (ECJ: extensive explanation of legal license - wide range of second-hand software)
[ITenRecht](#) (UsedSoft, a closer look)
[ITenRecht](#) (reselling software no breach?)
[ITenRecht](#) (The UsedSoft ruling: a small revolution)
[IViR](#) (Note under CJEU 3 July 2012, case C-128/11 (UsedSoft / Oracle International), Dutch Jurisprudence 2013-11, no. 118 , pp. 1337-1349)
[IViR](#) (N. Helberger, 'Verkauft ist verkauft, wiederholen ist gestohlen') Reflections on the UsedSoft ruling of the European Court, Annotation at the Court of Justice 3 July 2012 (UsedSoft / Oracle), Magazine for Consumer Law & Commercial Practices, 2013-2 , pp. 91-96.)
[IusMentis](#) (Downloaded software may be resold)
[KluwerCopyrightBlog](#) (Welcome to the Old World - UsedSoft and Full Online Exhaustion)
[Mitopics](#) (Second-hand software, is it possible?)
[NautaDutilh](#) (Resale of software licenses now allowed)
[SCL The IT Law Community](#) (Resale of Software Licenses: Latest ECJ Judgment)
[SOLV](#) (Column Menno Weij in Automation Guide: Usedsoft pronunciation)
[Web world](#) (European Court: resell software)