



# NQ Solutions

Reduce Reuse Recycle

## General terms and conditions

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## Table of contents:

<i>General terms and conditions NQ Solutions B.V.</i> .....	4
1. Definitions .....	4
2. Applicability .....	4
3. Offer.....	5
4. Agreement .....	5
5. Data and information.....	5
6. Estimates and quotations .....	5
7. Payment .....	6
8. Delivery period.....	6
9. Delivery .....	7
10. Transport.....	7
11. Retention of title .....	8
12. Complaints.....	8
13. Guarantee.....	9
14. Orders and communication.....	9
15. Liability .....	10
16. Confidentiality and intellectual property .....	10
17. Force majeure .....	10
18. Penalty clause .....	10
19. Applicable law and competent court .....	11

# General terms and conditions NQ Solutions B.V.

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## 1. Definitions

The following definitions (in which the singular tense will be deemed to represent the plural tense too), which are identified by means of initial capitals, will apply in these General Terms and Conditions:

1.1. "**Offer**": the Products offered and quotations issued by NQ Solutions B.V.; an offer can be qualified as a unilateral legal act of offering within the meaning of Book 6, Section 217, of the Dutch Civil Code (*Burgerlijk Wetboek*).

1.2. "**General Conditions**": the most recent version of these general terms and conditions of the private limited company NQ Solutions B.V. B.V.

1.3. "**Buyer**": the legal entity that has entered into, or wishes to enter into, an Agreement with NQ Solutions B.V..

1.4. "**Agreement**": all agreements entered into between NQ Solutions B.V. and the Buyer with regard to the purchase and supply of Products.

1.5. "**Parties**": NQ Solutions B.V. and the Buyer.

1.6. "**Product**": all telephones, tablets, laptops, computers, audio and other devices (such as MP3 players and gaming consoles), as well as all battery packs, batteries, adapters, accessories and other items, offered and supplied by NQ Solutions B.V..

1.7. "**Written**": by post (on paper) or electronically (via e-mail, WhatsApp, Messenger, WeChat or another cross-platform messaging system).

1.8. "**NQ Solutions B.V.**": NQ Solutions B.V., the selling party.

## 2. Applicability

2.1. The General Terms and Conditions will apply to Offers issued by NQ Solutions B.V., all negotiations between NQ Solutions B.V. and the Buyer, all Agreements entered into, or to be entered into, by NQ Solutions B.V. with the Buyer and also performance of the said Agreements.

2.2. Any deviations from these General Terms and Conditions may only be effected in Writing and with the consent of NQ Solutions B.V..

2.3. In the event of a conflict between the text of the General Terms and Conditions and the Agreement, the provisions of the Agreement will prevail.

2.4. If NQ Solutions B.V. does not exercise its rights under the Agreement and/or the General Terms and Conditions immediately at any time, this will not affect its right and possibility to do so in the future, should it wish to, for reasons of its own.

2.5. If one of the provisions of the Agreement or these General Terms and Conditions proves to be void or voidable, the Agreement and the General Terms and Conditions will remain in full force for the rest. The Parties will then enter into consultation with each other to agree on a replacement provision, which should reflect the purpose and purport of the void or nullified provision as much as possible.

2.6. NQ Solutions B.V. will be entitled to make changes to the General Terms and Conditions.

### 3. Offer

3.1. All Offers issued by NQ Solutions B.V. will be entirely without obligation and will have been calculated on the basis of the prices, rates and specifications applicable at the time they are issued.

3.2. All Offers issued by NQ Solutions B.V. will apply for a period of five working days, except where an Offer specifies otherwise.

3.3. NQ Solutions B.V. will be free to revoke any of the Offers it issues.

3.4. NQ Solutions B.V. will reserve the right to make changes to the Products shown on its website and in its catalogue, brochures and other promotion material and also to remove the Products in question from its product range.

### 4. Agreement

4.1. The Agreement with NQ Solutions B.V. will be concluded once NQ Solutions B.V. has confirmed an acceptance of the Offer in Writing. An Agreement with NQ Solutions B.V. will also be deemed to have been concluded when NQ Solutions B.V. starts to perform the Agreement in question .

4.2. The acceptance of an Offer by the Buyer will be irrevocable.

4.3. NQ Solutions B.V. will only be bound by (verbal or other) agreements made before or after the conclusion of the Agreement if NQ Solutions B.V. has confirmed the said agreements with the Buyer in writing.

4.4. NQ Solutions B.V. will be entitled to engage the services of third parties when performing the Agreement.

4.5. NQ Solutions B.V. will only be bound by agreements or promises made by employees of NQ Solutions B.V., or by the third parties engaged by NQ Solutions B.V., if it has confirmed the said agreements and/or promises to the Buyer in Writing.

4.6. By entering into the Agreement, the Buyer vouches that its creditworthiness is such that it will be able to meet its obligations. NQ Solutions B.V. will be entitled to make enquiries with third parties about the creditworthiness of the Buyer and, should evidence of sufficient creditworthiness not be found, to attach consequences to this situation, which might include: payment in advance or alternative payment arrangements. The Buyer will agree to the aforementioned consequences in advance.

### 5. Data and information

5.1. The Buyer will guarantee the accuracy, completeness and reliability of the data and information provided to NQ Solutions B.V. by the Buyer or on its behalf.

5.2. If the data necessary for performance of the Agreement is not available to NQ Solutions B.V., or is not available on time or in accordance with the agreements made, NQ Solutions B.V. will be entitled to charge the Buyer for any costs that are incurred as a result, at its usual rates.

### 6. Estimates and quotations

6.1. The Parties will be guided by the estimates and quotations issued by NQ Solutions B.V., subject to any price changes.

6.2. In principle, except where stated otherwise, all prices will be stated in euros and exclusive of VAT and also exclusive of packaging and/or shipping costs.

6.3. If price increases occur in the cost factors for NQ Solutions B.V. after the Agreement has been concluded, but before the full or partial performance thereof, which price increases will include but not be limited to changes to the price of materials, raw materials, transport, energy and exchange rates, NQ Solutions B.V. will be entitled to increase the price due by a proportionate percentage.

6.4. The Buyer will not be able to derive any rights from the discounts that NQ Solutions B.V. has given in the past.

6.5. NQ Solutions B.V. will always have the right to stipulate that certain Products will only be supplied when certain minimum quantities have been ordered.

## 7. Payment

7.1. Except where agreed otherwise in Writing, payments to NQ Solutions B.V. are to be made within five working days, which period of time is to be regarded as a strict deadline.

7.2. NQ Solutions B.V. will be free to require a payment in advance.

7.3. All payments made to NQ Solutions B.V. will be used to pay (1) costs, (2) interest and (3) principal sums, in the order which the aforementioned become due and payable.

7.4. If the Buyer fails to pay within the period of time specified, NQ Solutions B.V. will send the Buyer a payment reminder, which reminder will state that the Buyer has a period of 14 days in which to pay the invoice in question.

7.5. If the 14-day period expires without payment having been made, the Buyer will be in default and required to pay NQ Solutions B.V. interest, the amount of which will be equal to the statutory commercial interest due in accordance with Book 6, Section 119a, of the Dutch Civil Code, and all extrajudicial costs incurred in collection of the claim, which extrajudicial costs will be set at a minimum of 15% of the amount due, including interest, subject to a minimum of € 250.00.

7.6. Should the Buyer fail to meet its payment obligations, whether due to its unwillingness to pay or a force majeure situation, NQ Solutions B.V. will be entitled to suspend deliveries or terminate the Agreement, without prejudice to the right of NQ Solutions B.V. to full compensation. Unlike NQ Solutions B.V., the Buyer will not be entitled to offset an amount due to NQ Solutions B.V. from it against an amount due to the Buyer from NQ Solutions B.V., regardless of whether or not the aforementioned amount is due and payable. If any amount due is disputed, the Buyer will not be entitled to suspend the payment obligations it has vis-à-vis NQ Solutions B.V..

7.7. All of the outstanding receivables due to NQ Solutions B.V. from the Buyer will become immediately due and payable if the Buyer is in default, in the event of its liquidation, bankruptcy or an application for bankruptcy, the admission of the Buyer to lawful debt restructuring under the Debt Restructuring (Natural Persons) Act (*Wet Schuldsanering Natuurlijke Personen*), if the Buyer is put under guardianship, if its assets are attached or if the Buyer is granted a provisional or definitive moratorium.

7.8. NQ Solutions B.V. will be entitled to issue separate invoices where partial deliveries are the case.

## 8. Delivery period

8.1. The delivery period specified by NQ Solutions B.V. will be just indicative. As such, any delivery period indicated will never be a strict deadline (in accordance with Book 6, Section 83(a), of the Dutch Civil Code), except where explicitly agreed otherwise in Writing.

8.2. NQ Solutions B.V. will not be in default or liable if delivery is not made within the delivery period. NQ Solutions B.V. will notify the Buyer of any delays and of the new delivery period.

8.3. The delivery period will commence on the latest of the following moments in time:

1. The date on which the Agreement was concluded;
2. The date on which NQ Solutions B.V. receives the information necessary for performance of the Agreement;
3. The date on which NQ Solutions B.V. receives any amounts that the Buyer is to pay to it in advance under the Agreement.

8.4. If the delivery period is expressed in days, one day will be understood to mean a working day, not being a day of rest (Saturday or Sunday) or a national or international public holiday.

## 9. Delivery

9.1. Except where agreed otherwise in Writing, delivery will always be made ex works from the premises of NQ Solutions B.V..

9.2. NQ Solutions B.V. will be free to choose the type of load and loading, the means of transport and the carrier used.

9.3. The time at which the Products are made available to the Buyer ex works will be deemed to be the time of delivery and the time when all risk with respect to the Products passes from NQ Solutions B.V. to the Buyer. The same will apply if the Buyer refuses or fails to take delivery of the Products.

9.4. If the Buyer fails to take delivery of Products before the delivery period expires, the Products in question will be stored for it, at its expense and risk. NQ Solutions B.V. will not make the Products available to the Buyer until the latter has paid the additional transport and storage costs incurred. If the Buyer has not collected the Products within 30 days of the date on which they were originally delivered, NQ Solutions B.V. will have the right to resell or destroy the Products, at the expense of the Buyer.

9.5. NQ Solutions B.V. will be permitted to deliver Products that form part of the Agreement in consignments (partial deliveries).

9.6. NQ Solutions B.V. will reserve the right to claim any extra costs incurred for, by or for the purpose of the transportation of Products at a later date. The same will apply for the costs incurred for the preparation of customs documents, storage for inward clearance purposes, or as the result of a delay, by whatever cause, or in any other circumstances.

9.7. The Buyer may not resell the Products delivered by NQ Solutions B.V. under the name of NQ Solutions B.V..

## 10. Transport

10.1. If delivery is not made ex works or from another location to be specified by NQ Solutions B.V., the Products will be delivered to an address to be specified by the Buyer.

10.2. Delivery to the address specified by the Buyer will only take place if the Parties have agreed in advance on the additional costs involved and the conditions applicable.

10.3. NQ Solutions B.V. will specify the delivery costs separately when concluding the Agreement. If this is not possible, NQ Solutions B.V. will provide the Buyer with information that will enable it to calculate the shipping costs.

10.4. If the Buyer does not provide NQ Solutions B.V. with any further instructions, NQ Solutions B.V. will determine how the Products are to be packaged, transported, forwarded and suchlike. However, NQ Solutions B.V. will do so without accepting any liability in this respect, with the exception of its legal obligation to pay compensation.

10.5. A consignment note, delivery note or similar document issued upon delivery of the Products will serve as proof of delivery of the Products stated on the document in question.

10.6. Except where agreed otherwise in Writing, the Products will be transported at the expense and risk of the Buyer, even if the carrier has explicitly stipulated that all transport documents are to state that all losses ensuing from the transport will be at the expense and risk of NQ Solutions B.V.. If delivery is unsuccessful, all risk will continue to be at the expense of the Buyer.

10.7. If NQ Solutions B.V. has the permission of the Buyer to have the Products delivered by a carrier that has been chosen by NQ Solutions B.V. and the Buyer or a designated third party is not present to take delivery of the Products, all risk in the Products will be at the expense of the Buyer from the time at which the Products are stored at the address specified by the Buyer.

## 11. Retention of title

11.1. If the Buyer is in default, ownership of the Products delivered will only pass from NQ Solutions B.V. to the Buyer once the latter has met all of its obligations vis-à-vis NQ Solutions B.V. as regards (1) payment of the agreed consideration/the purchase price for the Products delivered or to be delivered (2) payment of the agreed consideration for work carried out or to be carried out by NQ Solutions B.V. and (3) the payment of claims ensuing from the failure of the Buyer to perform the Agreement, as referred to in Book 3, Section 92(2), of the Dutch Civil Code.

11.2. The Buyer will not be authorised to sell the Products that are subject to retention of title or to encumber them in any other way. This article will have effect under property law within the meaning of Book 3, Section 83(2), of the Dutch Civil Code.

11.3. While the Buyer has Products in its possession to which NQ Solutions B.V. is able to exercise its retention of title, the Buyer will be obliged to surrender the said Products to NQ Solutions B.V. immediately when requested to do so, without any judicial intervention being required.

11.4. If third parties attach the Products that have been delivered subject to retention of title or wish to establish or enforce rights to the said Products, the Buyer will be required to inform NQ Solutions B.V. of the aforementioned as soon as possible.

## 12. Complaints

12.1. The Buyer will be required to immediately check the conformity of Products originating from NQ Solutions B.V. as soon as they are delivered.

12.2. If the Buyer submits a complaint to NQ Solutions B.V. in relation to the non-compliance of the Products delivered with the Agreement, NQ Solutions B.V. will only accept the said complaint if it is submitted in Writing within a reasonable period of time and describes the nature of the defect. The phrase “within a reasonable period” will be deemed to be a period of 24 hours after delivery, or a period of 24 hours after the defect in question was observed.

12.3. Complaints relating to the prices calculated and other complaints pertaining to invoices must be submitted to NQ Solutions B.V. in writing within a reasonable period of no more than seven days after the invoice date, also describing the nature of the complaint. Complaints of this nature that are submitted at a later date will not be accepted.

12.4. Complaints will not be accepted if:

1. there are just minor deviations in quality, quantity, material, dimensions, colour and other deviations and these deviations are deemed admissible in the sector;
2. the Product deviates from an image in the catalogue, brochures and other NQ Solutions B.V. promotion material; c. the defect in question is the result of a drawing, sketch, design, specification, material or information provided and/or made available by the Buyer;
3. the Buyer has repaired or modified the Product itself (as part of which it opened up or dismantled the Product), or has had it repaired or modified by third parties (as part of which the Product was opened up or dismantled);

4. the Product delivered has been exposed to abnormal conditions in the broadest sense of the word or has otherwise been handled carelessly or contrary to the instructions of NQ Solutions B.V..

12.5. The Buyer will be required to give NQ Solutions B.V. the opportunity to verify the merits of a complaint.

12.6. If complaints are justified, NQ Solutions B.V. will be free to choose whether to replace the Products delivered free of charge or to issue a credit note equal to the value of the Products returned.

12.7. Returns will only be accepted with the explicit approval of NQ Solutions B.V. and will be affected at the expense of the Buyer. If Products are returned without there being any fault on the part of NQ Solutions B.V., NQ Solutions B.V. will charge the Buyer an amount equal to 25% of the net invoice amount (over and above the original invoice amount); the Buyer will be free to prove that the actual loss sustained is lower. The latter will not apply if a return is approved by NQ Solutions B.V..

### 13. Guarantee

13.1. NQ Solutions B.V. will guarantee that the Products delivered by it are of a sound quality, in line with what the Buyer can reasonably expect under the Agreement. The guarantee provided will apply for the period of time specified below and subject to the following conditions.

13.2. In principle and unless specified otherwise, the guarantee period for the Products delivered by NQ Solutions B.V. will be seven days. This seven-day period will start on the date on which the Products are delivered.

13.3. If work is to be carried out under guarantee and/or replacement deliveries are to be made under the guarantee, this will not result in an extension of the guarantee period for the Products delivered by NQ Solutions B.V..

13.4. The guarantee provided for Products delivered by NQ Solutions B.V. will cover all defects that arise as the result of normal use. This will explicitly exclude:

- a. defects that do not qualify as a (justified) complaint by virtue of Article 11.4;
- b. damage sustained as the result of falling, pressure, impact, wear and tear or moisture; and
- c. damage caused by an external short circuit.

13.5. NQ Solutions B.V. will be required to independently assess whether a defect falls under the guarantee that NQ Solutions B.V. provides for the Products delivered by it.

### 14. Orders and communication

14.1. NQ Solutions B.V. will not be liable for misunderstandings, delays or the improper transmission of orders and communications that ensue from the use of the internet or other means of communication by NQ Solutions B.V. and the Buyer, except where an intentional act or gross negligence is demonstrable on the part of NQ Solutions B.V..

14.2. The Buyer will have ultimate responsibility for checking on the accuracy of the numbers, product types, delivery address and delivery instructions in the order confirmation.

14.3. The Buyer will bear any extra costs to be incurred by NQ Solutions B.V. if the delivery instructions provided in the order confirmation are incomplete or incorrect.



## 15. Liability

15.1. In the event of an attributable failure to perform on the part of NQ Solutions B.V., its liability will be limited to the amount of the net invoice value of the relevant Agreement. The liability of NQ Solutions B.V. will always be limited to the cover provided by the liability insurance policy.

15.2. NQ Solutions B.V. will not be liable for any indirect damage or loss, expressly including, but not limited to: trading loss, loss of profit, consequential loss, losses ensuing from business stagnation, immaterial damage, financial loss and personal injury, including all possible claims from third parties, in the broadest sense.

15.3. Where appropriate, the Products delivered by NQ Solutions B.V. may only be used for the purpose agreed on by the Parties.

15.4. The Buyer will be obliged to indemnify NQ Solutions B.V. against all possible claims from third parties in relation to alleged loss and/or damage of whatever nature that is caused by or in connection with the Agreement and/or the Products delivered.

15.5. Any claims against NQ Solutions B.V., except those that are recognised by NQ Solutions B.V., will lapse by the mere expiry of 12 months of the date on which the said claims arose.

## 16. Confidentiality and intellectual property

16.1. All information that NQ Solutions B.V. provides to the Buyer, in the broadest sense, including but not limited to company information that focuses on specific characteristics of the Products supplied by NQ Solutions B.V., and that is provided in the framework of negotiations, or the Agreement will be treated as strictly personal and confidential.

16.2. All intellectual property rights in relation to NQ Solutions B.V. Products, websites, brochures and suchlike will only be vested in NQ Solutions B.V..

## 17. Force majeure

17.1. The Parties will not be liable for a delay to or breach in the performance of the Agreement if the aforementioned is the result of force majeure and, as such, cannot be attributed to the Party in question.

17.2. The Parties will undertake to notify each other as quickly as possible should a force majeure situation arise.

17.3. NQ Solutions B.V. will be entitled to suspend the obligations vested in it while a force majeure situation persists.

17.4. If a force majeure situation lasts more than four weeks, the Parties will be entitled to terminate the Agreement. With the exception of the provisions of Book 6, Section 78, of the Dutch Civil Code (unjustified enrichment), the Agreement may be terminated without any compensation being due to the other Party in this respect.

## 18. Penalty clause

18.1. Should the Buyer infringe the articles of these General Terms and Conditions, it will forfeit to NQ Solutions B.V., without any further notice of default or judicial intervention being required, an immediately payable fine of € 10,000.00 per infringement, which fine will not be eligible for set-off. The Buyer will also be required to pay an amount of € 2,500.00 for every day the infringement lasts, without prejudice to the right of NQ Solutions B.V. to full compensation of the losses or damages ensuing from the infringement by the Buyer.

## 19. Applicable law and competent court

19.1. Dutch law alone will apply to negotiations with NQ Solutions B.V., the Agreement entered into with NQ Solutions B.V. and the performance thereof.

19.2. Any disputes between the Parties will only be submitted to the competent judge of the district court of East Brabant, 's-Hertogenbosch location.