

## GENERAL TERMS AND CONDITIONS FOR CLEANING SERVICES AND PRODUCTS

*Based on the general terms and conditions adopted by  
Sector Organisation Schoonmakend Nederland (Chapter A)*

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**Chapter A:** General section covering all types of cleaning services and products

**Chapter B:** Additional terms and conditions for remote agreements (the Progenta Webshop)

### **Chapter A: General section covering all types of cleaning services.**

#### **Article 1. Definitions.**

In these General Terms and Conditions, the following terms shall have the meaning given to them below:

**Progenta:** Progenta Project Services Benelux B.V., a private limited liability company organised and existing under Dutch law, also trading under the names progenta.com and progentashop.com

- having its registered office at Veenendaalsestraatweg 14b (3921 EC) in Elst (Utrecht - the Netherlands)

- Phone: +31 (0) 318-471823

- E-mail: info@progenta.com; web shop: info@progentashop.com

- Chamber of Commerce registration no. 30169203

- VAT no. NL809471747B02

**GDPR:** (European) General Data Protection Regulation;

**BLI:** Business Liability Insurance

**GTC:** these General Terms and Conditions;

**CLA:** the Collective Labour Agreement for the Dutch Cleaning and Window Cleaning Industry

**Services:** Cleaning and window cleaning services, including cleaning, clearing, and disinfecting Objects in the broadest sense of the word, including, for example,

*Facade, floor and glass cleaning and floor maintenance:*

Including the removal of contamination from vertical and/or horizontal surfaces caused by atmospheric influences, regardless of the type of material or structure, as well as applying protective, repellent and/or impregnating layers to these surfaces.

**Tools:** tools used by Progenta in connection with the Work, such as cleaning agents and materials, cherry pickers, equipment and machinery, etc.

**Information:** all information, data, materials and instructions provided by the Customer or by third parties at the Customer's request, including information about the Object and the surface areas to be cleaned at the Object.

**Object:** the object of the Work, including but not limited to the interior and exterior of buildings, such as floors, facades, and windows; the interior and exterior of ships, cleanrooms, buses, trains, sanitary facilities, production plants, slaughterhouses, factories, industrial sites, systems, stockrooms, inventory and/or other movable or immovable property, etc.

**Customer:** the natural person or legal entity that concludes an Agreement with Progenta;

**Agreement:** any agreement between the Parties regarding the supply of Products and Services to the Customer, including the Work Programme, any written amendment or addition to the Agreement, tacit renewals thereof, as well as all actual and legal acts in preparation and performance of that agreement, including oral and written offers from Progenta (including remote agreements);

**Parties:** Progenta and the Customer;

**Products:** Cleaning agents, equipment, machines, systems, sanitary and other consumables, etc. related to the Services, in the broadest sense of the word, that are sold or rented to the Customer.

**Work:** all useful and necessary tasks and activities to be performed by Progenta for the Customer in connection with the Services as described in the Agreement.

**Work Programme:** an overview (work slips, etc.) forming part of the Agreement on which

Progenta, in consultation with the Customer, describes the Work in as much detail as possible, stating if possible the location, time, and frequency of the Work, etc., including all relevant preparatory measures and the price.

**Article 2. Order of prevalence.**

Chapter A applies to all Services, Work and Products provided by Progenta. Chapter B additionally applies if the Parties have concluded a Remote Agreement as defined in that Chapter. In case of conflict between the content or interpretation of the Agreement and the GTC, the content of the Agreement prevails. In case of conflict between the content or interpretation of Chapter A and of Chapter B, Chapter B prevails over Chapter A.

**Article 3. General Provisions.**

- 3.1 These General Terms and Conditions (“GTC”) apply to all Agreements (including the Remote Agreements referred to in Chapter B and including all Progenta offers).
- 3.2 Provisions that deviate from these terms and conditions are only binding if agreed in writing between the Parties and only apply to the relevant case.
- 3.3 The applicability of general terms and conditions declared applicable by the Customer, regardless of the time when they are invoked, is excluded.
- 3.4 The stipulations of these terms and conditions are made not only for the benefit of Progenta, but also for the benefit of its directors, shareholders and any persons employed by Progenta, anyone engaged by Progenta in the performance of an Agreement; and anyone for whose acts or omissions Progenta could be legally liable.
- 3.5 If for reasons of leniency Progenta waives strict compliance with these terms and conditions, this does not mean that Progenta loses the right to demand strict compliance with these terms and conditions in the future in similar or other cases as yet.
- 3.6 Progenta reserves the right to unilaterally supplement and/or amend the GTC at any time. These amendments and/or additions shall only be binding on the Customer after they have been declared applicable in writing, and the Customer has received a copy of the new terms and conditions. Any departure from these GTC at the Customer's request shall only be binding if and to the extent this is expressly agreed in writing.
- 3.7 If these terms and conditions have also been drawn up in a language other than the Dutch language, the Dutch text will always be leading in the event of differences.

**Article 4. Offer and acceptance; Concluding an Agreement**

- 4.1 All offers for Progenta's Services and/or Products are subject to contract, which means that Progenta may withdraw the offer as long as it has not been accepted by the Customer, unless a term of validity has been agreed therein. All prices stated in an offer are exclusive of VAT and other government levies, and exclusive of any costs to be made in connection with the Agreement, including travel and shipping costs, unless stated otherwise.
- 4.2 Progenta shall not be bound by any evident mistakes or errors in the offers for Services and/or Products.
- 4.3 Any acceptance by the Customer that deviates from Progenta's offer, whether or not on minor points, will always be considered a rejection of the offer and as a new offer by the Customer. An Agreement shall only be concluded in accordance with this new offer after Progenta has accepted the offer in writing.
- 4.4 An Agreement shall also have been concluded upon:
  - (1) the Customer accepting an offer for Progenta's Services and/or Products in writing; or
  - (2) Progenta confirming the provision of the Services and/or Products in writing following an oral agreement between the Parties; or
  - (3) the Customer tacitly allowing Progenta to commence performing the Agreement and the Work specified therein.
- 4.5 The provisions of Part 1, Title 7, Book 7 of the Dutch Civil Code (“DCC”) (“Engagement”) apply to the Agreement, with the exception of Article 7:404 DCC.

**Article 5. Performance of the Agreement for the provision of Services and Work Programme by Progenta.**

- 5.1 The Work Programme is binding and leading between the Parties as regards the scope and quality of the Work. This means that the Customer may not give Progenta's employees oral instructions at the Object that deviate from the Work Programme. If this nevertheless occurs, Progenta may charge this as additional work, where necessary with retroactive effect.
- 5.2 If Progenta's employees fail to perform parts of the Work Programme to the detriment of the Customer without the Customer's consent, Progenta will call the employees to account immediately upon written notification by the Customer. After it has verified the matter Progenta shall order its employees to perform the unperformed Work the next time Progenta's employees are present at the Object as yet, or shall partially refund the Customer. The foregoing shall be at Progenta's discretion.
- 5.3 If, during the performance of the Agreement, Progenta finds that minor deviations from the Work Programme are needed to fully or partially perform the Services, Progenta may change the Work Programme at its sole discretion, without adjusting the agreed price, provided that a similar quality is guaranteed.
- 5.4 If, during the performance of the Agreement, Progenta concludes that permanent deviations and therefore changes to the Work Programme are needed to fully or partially perform the Services, requiring a reasonable adjustment of the agreed price, this change in the Work Programme will only take place after the Customer has agreed to the adjusted price in writing. Progenta may suspend the Work resulting from such permanent deviations until the Customer has accepted the adjusted price.
- 5.5 Unless otherwise stated in the Agreement, the Work will solely be performed on business days from Monday to Friday, excepting Christian and national holidays. If in the opinion of the Customer or Progenta suddenly occurring special circumstances so require, this provision may be waived in mutual consultation. The nature of the Work and/or the Object may require that the Work must also be carried out on Christian or national holidays.
- 5.6 If the Work is delayed or suspended due to an emergency, of any kind, or for a cause that is attributable to the Customer, e.g. non-functioning cleaning equipment and systems belonging to the Customer, the time lost may be charged to the Customer as hours worked. These hours will be specified on the invoice separately.
- 5.7 If Progenta's employees are obliged to comply with specific local safety regulations and rules of conduct at an Object, the Customer shall provide the employees and Progenta's supervisor with a copy of these rules and regulations timely in advance, i.e. before the start of the Work, together with adequate instructions and explanations. The Customer must furthermore display a copy of those rules and regulations or make them available at Progenta's workspace.

**Article 6. Compliance with the Work Programme; Verification.**

The Customer must promptly notify Progenta in writing if the Work is not performed in conformity with the Work Program or significantly deviates from it to the detriment of the Customer. The Work Programme is based, in principle, on a quality standard and control system agreed between the Parties, on the basis of which it is possible to objectively determine whether the result of the Work and the execution of the Work Programme are in conformity with that standard. This written notification must at least accurately state the time, nature and severity of any deviation from the Work Programme, as well as the Object and the location, and must stipulate a reasonable period within which Progenta must remedy the observed defect.

**Article 7. Tools and support provided by the Customer.**

- 7.1 Progenta is free in its choice of Tools. All Tools are included in the price, unless the Parties have agreed otherwise in writing.
- 7.2 The Customer warrants that sufficient clean hot and cold water, water pressure, electricity, gas, air and steam will be available, free of charge, to perform the Work Programme. The Customer furthermore warrants that the rooms in the Object of which the floors must be cleaned will be completely cleared before the start of the Work.
- 7.3 The Customer will provide, at no extra cost, sufficient lockable storage space, such as tool cabinets and the like, for storing Tools. These lockable storage spaces shall only be accessible to Progenta and its employees. The Customer will handle Progenta's Tools used and stored at the Customer's premises with due care, and to that end will, among other things, properly lock the Object and take all measures necessary to preserve those Tools.
- 7.4 The Tools remain the property of Progenta unless otherwise agreed.

- 7.5 Upon Progenta's first request, the Customer will cooperate with Progenta recovering its Tools. The Customer therefore hereby waives any rights of retention with regard to these Tools and will not have these Tools attached or cause them to be attached.
- 7.6 The Customer will make sufficient facilities available to Progenta's employees free of charge, in consultation with Progenta, such as a cloakroom, a storage room, a break room, etc. The Customer shall comply with the Working Conditions Act in this regard.
- 7.7 The Customer will enable Progenta to dispose of any waste produced by the cleaning activities in the space provided for this purpose by the Customer.
- 7.8 The Customer shall inform Progenta timely, correctly and as fully as possible of any matters that may be relevant for the performance of the Agreement or that it is required by law to provide. Progenta may rely on the Information provided by the Customer being accurate and complete without having to verify the Information. The Customer also warrants the accuracy, completeness and reliability of the Information provided to Progenta if it originates from third parties. The Information must be provided in the form and in the manner requested by Progenta. If Information turns out to be incorrect, Progenta shall not be liable for any damage caused to an Object as a result.
- 7.9 If the Information is not provided or not in time, Progenta may immediately suspend the (continued) performance of the Work. If the performance of the Agreement is delayed due to the Customer's failure to perform its obligations referred to in this Article, the Customer will be charged the resulting (additional) costs and Progenta will be entitled to charge (additional) compensation for any resulting (additional) Work. If the Customer has not completely cleared the rooms in the Object of which the floors must be cleaned and Progenta decides to clear the rooms itself, the Customer will be charged the additional time required to do so. Unless Progenta and the Customer have agreed otherwise in advance.

**Article 8. Subcontracting.**

Progenta will exercise due care in the selection of subcontractors it wishes to hire to perform the Agreement and will if necessary consult with the Customer in advance about hiring subcontractors.

**Article 9. No employee poaching**

- 9.1 The Customer or its affiliates agree not to employ any employees of Progenta or hire them in any other way, directly or indirectly, to perform Work for the benefit of the Customer or its affiliates, either during the term of the employment contract of Progenta's employees or during the term of the Agreement and for a period of six months after termination thereof, without the prior written consent of Progenta or a request as referred to in Clause 11.1.
- 9.2 If the Customer violates the previous paragraph it will owe Progenta, without judicial intervention being required, an immediately due and payable penalty of €3,000 for each employee and €500 for each week that the violation continues in respect of each employee.

**Article 10. Change of contract and employment**

- 10.1 Progenta is bound by the CLA, including its change of contract clause and the corresponding transfer protocol. In order to be able to comply with the obligations arising therefrom Progenta requires information from the Customer. The Customer therefore undertakes to consult with Progenta as soon as possible whether a new tender is required, whereby the Customer shall observe the minimum notice period of 3 months, or such longer period as may have been agreed, when terminating the Agreement. The Customer shall furthermore promptly pass on the details of the new cleaning company to Progenta if the contract has been awarded to another cleaning company, to enable Progenta to timely comply with its obligations under the CLA.
- 10.2 If, in the event of a change of contract, Progenta has received significantly wrong Information from the Customer, or partially as a result of the Customer's actions, or has received the Information too late, for example about the employees working at the Object, Progenta may terminate the Agreement with immediate effect, without owing any compensation, even before the start of the Work and until the 4th month after the Work has commenced, provided that this information

would have resulted in Progenta not having entered into the Agreement or on different terms and conditions. This shall be entirely at Progenta's discretion.

- 10.3 The Customer cannot hold Progenta liable for any damage of any kind caused by the employees taken over prior to the change of contract, nor does Progenta warrant the quality and performance of the agreed Work carried out by the employees taken over prior to the change of contract.

**Article 11. Takeover obligation in the event of insourcing.**

- 11.1 If after terminating the Agreement with Progenta the Customer insources the Services, i.e. will henceforth perform the Services itself, the Customer shall, at Progenta's first written request, offer the employees working at the relevant Object an employment contract, whereby the Parties agree now for then that this will take place on the basis of the statutory provisions of Article 7:662 et seq. of the Dutch Civil Code regarding the transfer of business.
- 11.2 If in the 12 months prior to the insourcing of the Services Progenta has purchased one or more durable Tools for the Work at an Object, with a combined gross purchase value of €500 or higher, the Customer shall be obliged, upon Progenta's written direction, to take over such Tools at the current book value. When calculating the book value, a 5 year depreciation for scrubbing machines and 2 years depreciation for other types of equipment and machines will apply.

**Article 12. Price of the Work and Products.**

- 12.1 The price of the Work is based on the following objective and subjective factors:  
**Objective factors** include:  
the cost-determining factors at the time of concluding the Agreement, including but not limited to Progenta's wage and/or other operating costs, the costs of the Tools, materials, and means of transport used, etc.  
**Subjective factors** include:  
the Customer's wishes and the characteristics of the Object apparent, specified, or assumed during the inspection of the Work, including but not limited to the surface area, occupancy, accessibility, fittings, furnishings, actual use and intended use.
- 12.2 If after the Agreement is concluded a change in the objective factors occurs over which Progenta cannot reasonably exert control, including but not limited to a change in the applicable CLA and/or the law, Progenta may pass on the resulting higher cost to the Customer, also if the change was foreseeable at the time of concluding the Agreement.
- 12.3 If, after concluding the Agreement, a change occurs in the subjective factors which, in Progenta's opinion, requires an adjustment to the Work Programme and the price, such price adjustment will only be made upon the Customer's written acceptance. This written acceptance is not required in respect of additional work within the meaning of Article 5.1.
- 12.4 The Customer is not entitled to a price reduction if Progenta's performance of the Work is not, or not entirely, possible or useful as a result of circumstances that are for the account and risk of the Customer by law, legal act or generally accepted practice.

**Article 13. Billing; Terms of payment.**

- 13.1 The Services and Products will be billed at the times specified in the Agreement. If the Agreement does not provide billing details, billing will take place after the Work is completed and after the Products have been delivered. If Work consisting of cleaning and maintenance of floors is carried out at another frequency than once a month, Progenta may convert the amount to be charged for this Work into a monthly fee, which fee will be billed monthly, unless the Parties have agreed otherwise.
- 13.2 All invoices are payable in the agreed manner within 30 days of the invoice date or so much sooner as the Parties may agree. The aforementioned payment term is a strict term. Payments must furthermore be made unconditionally and without suspension, discount or set-off, on any ground. The Customer will not seek any order permitting attachment of its own assets.  
All complaints about invoices must be submitted to Progenta in writing within 8 days of the invoice date. After this period has expired the Customer will be deemed to have accepted the invoice. Submitting a complaint does not give the Customer the right to suspend payment.
- 13.3 The Customer shall be in default by the expiry of the payment period, without notice of default being required.

- 13.4 If the Customer is in default in respect of any payment, all claims Progenta may have against the Customer are immediately and fully due and payable. Progenta may in that event furthermore suspend or terminate all or part of the Work. Progenta shall in no event be liable for any damage suffered by the Customer as a result of this.
- 13.5 For as long as the Customer is in default it shall owe default interest on the outstanding claims equal to 1% per month or part of a month.
- 13.6 In the event of extrajudicial debt collection the Customer shall owe, in addition to the principal and default interest, the actual collection costs incurred by Progenta. The extrajudicial collection costs shall be at least 15% of the first €5,000 (with a minimum of €250), 10% of the additional amount up to €10,000, 8% of the additional amount up to €20,000, 5% of the additional amount up to €60,000 and 3% of the excess above €60,000. In the event of judicial debt collection the Customer shall additionally owe the court costs, including all costs of legal assistance actually incurred and the (liquidated) costs of the proceedings if the court fully or for the most part rules against the Customer. Progenta may in that event furthermore suspend or terminate all or part of the Work. Progenta shall in no event be liable for any damage suffered by the Customer as a result of this.
- 13.7 If Progenta has reasonable doubts regarding the Customer's ability to pay, Progenta may, upon first request, both prior to and during the performance of the Agreement, demand a full or partial advance from the Customer or that it provides adequate security for the performance of its commitment. Adequate security shall in any case be understood to mean a standing bank guarantee, due and payable at Progenta's first request, issued by a first-class Dutch bank, for an amount equal to 110% of the amounts owed by the Customer (100% of these amounts plus a 10% surcharge for interest).
- 13.8 Progenta may request an advance equal to at least 30% of the price prior to the commencement of the Work in case of non-recurring Work.
- 13.9 Any payments made by the Customer shall serve as payment of, in the following order:
1. compensation of damage and extrajudicial and collection costs;
  2. compensation of default interest;
  3. the outstanding principal as invoiced.
- 13.10 If the Work consists of repairing damage in respect of which the Customer is entitled to payment under an insurance policy, e.g. cleaning up after a fire, the Customer will cooperate with assigning its claim against the insurers at Progenta's first request. This is without prejudice to the Customer's obligation to pay the outstanding amount to Progenta, including VAT, if and insofar as it is not covered under the insurance policy.

#### **Article 14. Retention of title to Products.**

- 14.1 Progenta retains the title to all Products sold by Progenta to the Customer until these Products, and all other claims referred to in Article 3:92(2) DCC that Progenta has or will obtain against the Customer, have been paid.
- 14.2 In view of this retention of title the Customer is obliged to store the Products with due care and mark it as the property of Progenta.
- 14.3 For as long as title to the Products has not passed to the Customer, the Customer may not pledge the Products or grant any other right to them to a third party. Nor may the Customer resell the Products, other than in the normal course of its business activities.
- 14.4 If the Customer fails to comply with its obligation or if Progenta has good reason to fear that the Customer will fail to do so, also in the cases referred to in Article 6:80 DCC, Progenta may demand immediate surrender of the Products that are subject to retention of title, without prejudice to its other rights. The Customer declares in this regard that it will at any time provide all relevant data from its records to Progenta at Progenta's first request. The Customer furthermore declares that it will allow Progenta access to its buildings and premises at Progenta's first request to enable it to verify whether the Products are still included in the Customer's inventory and to take possession thereof or transfer the ownership thereof to the Customer and to create a first undisclosed pledge on them.
- 14.5 After it has surrendered the Products the Customer will be credited the current market value of the Products, which shall in no event exceed the original price, less the costs incurred by Progenta in the recovery and any other damage incurred by Progenta.
- 14.6 If the Customer fails to comply with the provisions of this article, in particular the obligation to surrender, or to do so in time, the Customer shall owe Progenta, without judicial intervention being required, an immediately due and payable penalty of €10,000 for each non-compliance plus €500 for each day that the non-compliance continues.

- 14.7 The Customer herewith waives all rights of retention it may have in respect of the products and declares that it shall not seek an order to have these products attached.

#### **Article 15. Delivery of Products; Delivery times**

- 15.1 Transport of Products is at the Customer's expense and risk, unless agreed otherwise. However, the risk to the Products to be delivered shall pass to a Customer who is a consumer the moment these Products are delivered at the stated delivery address (or delivery has been attempted in accordance with paragraph 3 below).
- 15.2 Deliveries will be made at the address provided by the Customer when concluding the Agreement. Where Products are transported abroad, delivery will be Ex Work (Incoterms); different terms and costs may apply. If delivery is made in parts, Progenta may consider each delivery as a separate transaction.
- 15.3 In the event of agreed transport, Progenta will have fulfilled its delivery obligation (subject to proof to the contrary) the moment of the first attempt to deliver the Products to the Customer. In the event of delivery at home, the carrier's report, indicating refusal to take delivery or that the Customer was absent, will serve as full proof of the attempt to deliver.
- 15.4 All (delivery) times mentioned by Progenta are by way of indication only. Thus, no rights may be derived from the aforementioned delivery times. Progenta shall not be in default if the delivery times are exceeded and it shall not be liable towards the Customer as a result; nor shall this constitute ground for the Customer to cancel the Agreement. If the Customer orders a Product that is temporarily out of stock, it will be stated when the Product will be available again. In that case the Customer may cancel the order free of charge, unless the Parties have agreed otherwise.

#### **Article 16. Defects and Complaints Period regarding Products**

- 16.1 The Customer is obliged to carefully inspect the Products, or have them inspected, immediately upon delivery. The Customer is obliged to notify Progenta within 48 hours if the Products are defective or incomplete. Complaints about defective Products must be submitted by the Customer without delay, and at least within 14 days after the Customer became aware of the defect or should reasonably have been aware of the defect at the latest. However, consumers may submit complaints about defective Products within a period of two (2) months of discovery.
- 16.2 The complaint must be submitted to Progenta in writing, stating reasons. The complaint must describe the defect in as much detail as possible, to enable Progenta to respond adequately. The Customer shall allow Progenta the opportunity to investigate the complaint, or have it investigated. If, in Progenta's opinion, a complaint is well-founded, it will repair the Product and/or deliver the correct Product, or refund the Customer the price paid for the Product, all this with due observance of the provisions of Articles 17 and 18 (regarding warranty and liability).
- 16.3 The Customer will not be entitled to repair, replacement or refund if a defect is reported after the expiry of the complaint period (as referred to in paragraph 1).

#### **Article 17. Products and Services Warranty**

- 17.1 Progenta warrants that the Products and/or Services conform with the Agreement, the specifications stated in the offer, the reasonable requirements of soundness and/or usefulness, and the statutory provisions and/or government regulations in force on the date of concluding the Agreement.
- 17.2 Progenta's warranty period corresponds to the manufacturer's warranty period, if applicable. However, Progenta shall in no event be responsible for the ultimate suitability of the Products and/or Services for each individual use by the Customer, nor for any advice regarding the use or application of the Products.
- 17.3 Minor deviations in quality, colour, weight, dimensions, operation or otherwise do not constitute ground for return, repair or warranty.
- 17.4 The warranty is excluded:
- in the event of normal wear and tear;
  - if the Customer is unable to submit the original invoice, or if it has been altered or made illegible;
  - if defects are caused by undesignated or improper use;
  - if the Customer has repaired and/or adapted the delivered Products, or has had them repaired and/or adapted by third parties;
  - if the delivered Products have been exposed to abnormal circumstances or are otherwise treated carelessly or contrary to Progenta's instructions and/or those stated on the packaging;

- if the defectiveness is wholly or partially the result of regulations imposed or to be imposed by the government with regard to the nature or quality of the materials used.
- 17.5 The Customer will be notified if the repair of a defect involves costs that are not covered by the warranty. If the Customer does not expressly agree to the specified costs in writing, the Products concerned will be returned to it against payment of the research costs. If the Customer - not being a consumer - fails to pay these research costs within six (6) months after it has received the costs specification, the ownership of the Product shall revert to Progenta.

#### **Article 18. Liability and BLI.**

- 18.1 Progenta's business liability and care, custody & control liability towards the Customer is limited to compensation of the direct (property) damage suffered by the Customer and its related third parties as a direct result of an attributable failure, or related series of failures, to perform the Work. This liability for direct damage shall at all times be limited to the amounts paid out by Progenta's liability insurer in the event concerned (see the maximum amounts of cover in paragraph 4), or to the amount specified in paragraph 5 of this article if no payment is made under the policy, plus any excess payable by Progenta under the BLI.
- 18.2 Direct damage includes - but is not limited to - the reasonable costs made to determine the cause and extent of the damage; the reasonable costs made to ensure that Progenta's performance conforms to the Agreement, and the reasonable costs made to prevent or mitigate the damage.
- 18.3 Progenta shall in no event be liable for:
- a) *indirect damage*, including but not limited to lost profits, lost savings, business interruption loss, e.g. by being temporarily unable to use spaces in the Object, and other consequential loss or damage, or indirect damage resulting from Progenta's failure to perform or to do so in time or properly, with the exception of liability caused by an intentional act or wilful recklessness on the part of Progenta within the meaning of Article 7:952 DCC;
  - b) *in respect of Work relating to the cleaning and maintenance of floors*: damage caused to the floor by performing the Work if the prior cleaning history of the floor is unknown or if the Customer has given specific cleaning instructions to Progenta that caused the damage.
- 18.4 Progenta has taken out a BLI. This policy covers loss or damage suffered by the Customer for which Progenta is deemed liable under the BLI, up to a maximum amount of:
- in the event of business liability: €1,134,000 for each claim, with a maximum of €2,500,000 in aggregate in each policy year (after deducting the excess for each claim, as specified in the BLI);
  - in the event of damage to property in the care, custody or control of, but not owned by the insured (to glass surfaces, interiors, facades or floors): €50,000 for each claim, with a maximum of €100,000 in each policy year (after deducting the excess for each claim, as specified in the BLI);
  - if Progenta loses the keys to an Object: the costs of replacing the keys with a maximum of €25,000 for each claim, with a maximum of €50,000 in each policy year (after deducting the excess for each claim, as specified in the BLI).
- 18.5 If, for any reason, no payment should be made under the BLI, Progenta's total liability, on any ground, shall be limited to the amount of damage that Progenta anticipated to suffer at the time of concluding the Agreement as a possible result of the acts or omissions that must be compensated. The above shall at all times be capped at the amount of the net invoice value of the Work performed and/or Products provided, and if the Agreement is a continuing performance agreement, at one time the amount charged to the Customer in the twelve months prior to the occurrence of the damage.
- 18.6 Without prejudice to the above provisions, Progenta's liability for damage resulting from the use of Products it has purchased from third parties shall not exceed the amount for which these third parties shall be liable towards Progenta.
- 18.7 Progenta shall in no event be liable for the costs and/or damage related to the release of asbestos as a result of the Work.
- 18.8 Any right to compensation shall at all times be conditional on the Customer promptly notifying Progenta of the damage in writing, and within 14 days after the Customer became aware of the damage or should reasonably have become aware thereof at the latest.
- 18.9 All legal claims must be brought by the Customer within 1 year after the timely notification of the damage, on pain of forfeiture of all rights.
- 18.10 Progenta cannot invoke a limitation of its liability if the damage is the direct result of the intent or willful recklessness on the part of Progenta.
- 18.11 The Customer is obliged to take measures to mitigate damage. Progenta may at all times remedy or mitigate the damage by repairing or improving the Work performed.

18.12 The provisions of the previous paragraphs relate to both the contractual and the non-contractual liability of Progenta towards the Customer.

**Article 19. Force Majeure; Suspension; Cancellation.**

- 19.1 Force majeure ("non-attributable non-performance") is understood to mean any circumstance that, subjectively speaking, cannot be attributed to a fault on the part of Progenta, and that makes it impossible or too problematic from a practical point of view for Progenta to perform, or continue performing the Agreement or any part thereof, even if this circumstance was already foreseeable at the time of concluding the Agreement. Force majeure as referred to above will in any event mean, without limitation: death and inability to act on the part of the owner-director of Progenta or its employees; war and threat of war, danger of war, terrorism, riots, willful damage, fire, water damage, natural disasters, epidemics, pandemics, outbreaks of bacterial infections and diseases such as listeria. Salmonella (in the Object), release of toxic substances (in the Object), flooding, industrial strikes, lock-outs, import and export restrictions, government measures, machine breakdowns, disruptions in the energy supply (in the Object), failure to obtain certain permits necessary to perform the Work, interruption of operations, and force majeure at suppliers'.
- 19.2 If a force majeure event occurs as referred to in paragraph 1, Progenta may suspend performance of its obligations or part thereof for the duration of the event, whereas the Customer may not claim performance, damages or partial cancellation as a result thereof, but will, however, continue to be obliged to pay the usual invoices for the agreed Services.
- 19.3 If the force majeure event, and as a result thereof the suspension as referred to above, lasts more than 4 weeks, Progenta may terminate the Agreement in whole or in part, in which event it shall not owe the Customer any compensation, on the understanding that if Progenta has partially fulfilled any obligations before or after the force majeure event occurred, it may at all times charge a proportionate part of the price.
- 19.4 Progenta may also invoke force majeure if these events or circumstances occur after it should have fulfilled its obligation.
- 19.5 Without prejudice to its other rights under the Agreement and/or these terms and conditions and/or the law, Progenta may suspend performance of its obligations if:
- a) the Customer fails to perform one or more of its obligations under the Agreement and/or these terms and conditions and/or the law, or fails to do so in time or properly;
  - b) Progenta has good reason to fear that the Customer will fail to perform one or more obligations;
  - c) the Customer is declared bankrupt; has filed for bankruptcy; has been granted a provisional or final suspension of payments, or a request to that effect has been made; a statutory debt rescheduling arrangement has been declared applicable to the Customer, or a request to that effect has been made, or the Customer loses the right to dispose of its assets on other grounds;
  - d) the Customer's business is liquidated;
  - e) the Customer ceases its business operations or transfers control of its business to another party.
- 19.6 Without prejudice to the other rights it has under the Agreement and/or these terms and conditions and/or the law, Progenta may in the cases referred to in paragraph 5 of this article terminate the Agreement in whole or in part, without judicial intervention being required, if, despite a demand for performance, the Customer continues to fail to perform its obligations or provide sufficient security for the performance of its obligations for more than eight days. In this context, the term "the Customer" should be read, where applicable, as "the receiver" or "the administrator".
- 19.7 If the Agreement is fully or partially cancelled by Progenta on the basis of this article, it shall not owe the Customer any compensation and all of its claims against the Customer shall become immediately and fully due and payable.

**Article 19a. Force Majeure and unforeseen circumstances on the part of the Customer**

- 19.a.1 If the Customer invokes a force majeure event as referred to in Article 19.1, the Customer may not suspend or cancel the Agreement, even if performance has only become too problematic from a practical point of view, but is still possible. The Customer may therefore only invoke force majeure as referred to in Article 19.1 if performing the Agreement has in fact become absolutely impossible. Under the Agreement, this shall only be the case if, due to a circumstance beyond its control or an event as referred to in Article 19.1, it has become impossible for the Customer to have the Object cleaned or to pay the usual invoices for the Services and Products.

Only in those cases will the Customer be entitled to suspend the purchase or payment of the Services and Products or to cancel that part of the Agreement that cannot be performed. In that case, cancellation and non-payment will be permitted after 3 months have elapsed after the force majeure event arose. Suspension or cancellation must at all times be invoked in writing by registered letter, accompanied by a description and substantiation of the force majeure event.

- 19.a.2 If the Customer does not affect payment on the ground of an unjustified invocation by the Customer as set out above, the Customer is in default and Progenta shall be entitled, immediately after the due date (see Article 13.2) of the first unpaid invoice, and therefore without any notice of default, to:
- a) suspend performing its own Services and delivery of its Products pursuant to Article 6:52 DCC; and
  - b) claim interest and collection costs as referred to in Article 13;
  - c) cancel the Agreement and claim damages pursuant to Article 6:265 DCC, consisting at least of the contract sums owed up to the date on which these were originally owed.
- 19.a.3 Any request of the Customer to change the Agreement, including e.g. suspension of payment or reduction of the Agreement due to unforeseen circumstances within the meaning of Article 6:258 DCC (for example, due to a pandemic that could not have been foreseen at the time of concluding the Agreement ), must be made through the court . Progenta shall only be obliged to cooperate with such request if it is granted by the court. Should a competent court grant the Customer's request , the Parties hereby agree, now for then, that the court will only grant the request on the condition that the Customer continues to pay at least 60% of the Services for the remaining term of the Agreement. The other 40% will be payable by Progenta in that event. This is because although the parties may agree the consequences of invoking unforeseen circumstances, invocation itself may not be contractually excluded.

## **Article 20. Processing personal data**

*(N.B. This article does not impose any obligations on Customers that are Consumers.)*

- 20.1 In connection with performing the Agreement it is necessary for the Parties to provide personal data within the meaning of the GDPR , such as but not limited to names, email addresses and telephone numbers. The parties may not use personal data for any purposes other than in connection with the performance of the Agreement. In that event, both the Customer and Progenta are, in principle, always considered as controllers within the meaning of the General Data Protection Regulation ("GDPR") with respect to the personal data provided to Progenta by or on behalf of the Customer, unless Progenta can be considered as a processor within the meaning of the GDPR.
- 20.2 If in the performance of the Agreement Progenta acts as processor within the meaning of the GDPR, a separate data processing agreement will be submitted for signature that meets the statutory requirements of the GDPR.
- 20.3 Each of the Parties shall at all times be independently obliged to comply with the GDPR and other applicable laws and regulations, as well as with any applicable contractual or internal obligations related to the protection of personal data, including but not limited to taking appropriate security measures, timely handling requests from data subjects, and informing data subjects of the processing of personal data.
- 20.4 The Parties warrant each other that, as controller, they have lawful access to the personal data referred to in the first paragraph and are authorised to provide this data to the other party. The Parties therefore indemnify each other against all claims by the relevant data subjects and third parties with regard to this personal data, except for that data for which a controller itself is liable under the GDPR. As Parties that are both controllers that exchange data, they have no legal obligation within the meaning of the GDPR to make further written arrangements about the privacy of the data subjects in respect of which the personal data is exchanged between the Parties.
- 20.5 Where personal data is processed by the Parties in the context of the Agreement, the Parties warrant that this personal data will be processed in a lawful, proper and careful manner, and in accordance with the GDPR. Technical and organisational measures will be taken to protect the personal data against loss or any form of unlawful processing, taking into account the state of the art and the nature of the processing.

- 20.6 Each of the Parties undertakes to cooperate to all possible and relevant extent when a data subject submits a request in the exercise of his or her rights, such as but not limited to the right to access, correct or delete personal data, object to the processing of personal data and a request to transfer his or her personal data.
- 20.7 The Parties undertake to promptly notify each other, within the statutory time limits, if they become aware of a data breach involving personal data. The parties will subsequently keep each other informed of new developments regarding that data breach.
- 20.8 At least the following information will be provided in the event of a data breach:
- 1) a detailed description of the data breach;
  - 2) kind/type of personal data involved in the data breach;
  - 3) the number of people whose personal data are involved in the data breach;
  - 4) the identity of the people involved in the data breach;
  - 5) the measures taken to limit negative consequences for the data subjects and to remedy the data breach;
  - 6) the cause of the data breach;
  - 7) the duration of the data breach and the time of origin.

#### **Article 21. Term and termination of the Agreement.**

- 21.1 Unless otherwise agreed the Agreement for the periodic provision of Services and Products will be concluded for an indefinite period of time.
- 21.2 An open-ended agreement may only be terminated after Progenta has performed the Work for at least 6 months with due observance of paragraphs 3 and 4 of this article.
- 21.3 The notice period to be observed by parties to an open-ended agreement is at least 3 months, which period starts:
- *in the event of termination by Progenta:*
    - on the date on which Progenta sends the notice of termination by registered letter to the Customer.
  - *in the event of termination by the Client:*
    - 1) if the contractor participates in the new tender procedure:
      - on the date on which Progenta has received the notification stating the name of the new contractor;
    - 2) if the contractor does not participate in the new tender procedure:
      - on the date on which Progenta has received the notice of termination by registered letter, provided, however, that at least 1 month of the notice period must be after the moment Progenta has been notified of the new contractor or of the decision to re-insourcing.
- 21.4 The Parties may only terminate an Agreement by registered letter with effect from the end of the calendar month, or with effect from the end of the term of the Agreement if it concerns a fixed-term Agreement. When giving notice the Customer must state the reason.
- 21.5 A fixed-term Agreement may not be terminated by the Customer prematurely, nor may it be terminated (cancelled) before Progenta has commenced performing the Agreement. Notice must be given with effect from the end of the term, provided that Progenta has received the notice of termination at least 3 months in advance, with due observance of the conditions in paragraph 4 of this article.
- 21.6 If the Customer gives notice of termination prematurely or defectively (e.g. without observing a notice period), the Customer shall owe Progenta the full contractually agreed price for the remaining term of a fixed-term Agreement, or for the remaining notice period in the event of an open-ended Agreement. In those cases the Customer will also owe all additional costs already made by Progenta in connection with the Agreement, as well as the costs arising from cancelling any third parties it has already hired (e.g. subcontracting costs). Progenta shall furthermore be entitled to compensation of the loss in the form of lower capacity utilization.
- 21.7 If Progenta proceeds to terminate or cancel the Agreement, the Customer may demand Progenta's cooperation in transferring the Work to third parties, provided that all outstanding invoices have been paid. The Customer shall not be entitled to such cooperation in the event of intent or wilful recklessness within the meaning of Article 7:952 DCC on the part of the Customer, as a result of which Progenta is forced to terminate the Agreement. The Customer is not entitled to any compensation in the event of termination or cancellation of the Agreement.

#### **Article 22. Repair in case of nullity**

- 22.1 If any provision of these GTC or the Agreement is void and/or invalid and/or unenforceable in full or in part as a result of any statutory provision, judicial decision or on other grounds, this will not effect the validity of the other provisions of the GTC or the Agreement.

22.2 If any provision of the Agreement or part of the Agreement cannot be invoked by law, the remaining part of the Agreement will remain in full force and effect, on the understanding that the provision of which a part cannot be invoked must be deemed to have been amended in such a way that it may be invoked, whereby the Parties' intention with regard to the original provision or the original part will be maintained as much as possible.

**Article 23. Applicable law; disputes**

23.1 The legal relationship between the Parties is governed by Dutch law.

23.2 Any disputes regarding the interpretation, performance and termination of the Agreement will be submitted for adjudication to the competent judge of the District Court for Midden-Nederland in Utrecht. In departure from this Progenta may submit disputes (other than disputes with a consumer) involving a financial interest in excess of €25,000 to the Arbitration Board for the Dutch Cleaning and Industrial Services Industry (*Raad van Arbitrage voor de Schoonmaak- en Bedrijfsdienstenbranche*) for adjudication. The Arbitration Board for the Cleaning and Business Services Industry will adjudicate the dispute in accordance with the Arbitration Rules for Cleaning and Business Services as they are in force at the time of concluding the Agreement. In case of urgent disputes Progenta will, however, be entitled to submit a request for preliminary relief to the Preliminary Relief Judge of the District Court of Midden-Nederland in Utrecht.

## **Chapter B: Additional terms and conditions for remote agreements (such as the Progenta Webshop)**

### **Article 24. Definitions**

In these terms and conditions the following terms have the meaning given to them below:

Remote Agreement: an Agreement concluded as part of a system for the remote sale of Products and/or Services set up by Progenta, whereby Progenta and the Customer are not simultaneously present and whereby the entire procedure, up to and including concluding the Agreement, is concluded using one or more means of (remote) communication, e.g. sales via Progenta's webshop.

In these General Terms and Conditions, writing will also include 'by e-mail'.

Consumer: any Customer who is a natural person and who does not act for purposes related to his business or professional activity and who enters into a Remote Agreement with Progenta. Unless stated otherwise, all provisions of these GTC also apply to Consumers.

### **Article 25. Applicability of Chapter B**

The provisions of this Chapter B of the GTC are applicable to any offer made by Progenta and to any Remote Agreement concluded between Progenta and Customer.

### **Article 26. Concluding Remote Agreements**

- 26.1 Each offer applies "while stock lasts". Subject to this reservation, a Remote Agreement is concluded once the Customer has accepted the offer and had fulfilled the related conditions.  
If the Customer has accepted the offer electronically, Progenta will promptly confirm receipt of acceptance of the offer by electronic means. For as long as Progenta has not confirmed receipt of such acceptance, the Customer may cancel the Remote Agreement.
- 26.2 Progenta may - subject to the statutory provisions - inquire whether the Customer is able to fulfil its payment obligations, and whether there are any facts or factors that are relevant for entering into the Agreement responsibly. If, further to this inquiry, Progenta has good grounds not to enter into the agreement, Progenta may refuse an order or request, stating reasons, or make the performance subject to special conditions.
- 26.3 The Customer is responsible for the account created in his name and for managing the associated user name and password. All orders placed via the Customer's account are deemed to have been placed by the Customer and are binding.
- 26.4 Progenta's acceptance (of an order) shall be deemed to be the correct representation of the Remote Agreement, unless the Purchaser objects in writing within 24 hours of receipt thereof.

### **Article 27. Prices**

- 27.1 All individual prices for Services and Products stated on the web shop are including VAT and other government levies, but exclusive of shipping costs, unless stated otherwise.  
If the price of the offered Products increases between placing and fulfilling an order, the Customer may cancel the order or terminate the Remote Agreement within ten (10) days of Progenta's notification of the price increase.

### **Article 28. Payment**

- 28.1 Progenta may demand payment of up to 50% of the purchase price for a Product in advance from a Customer who is a Consumer. In that case the Customer cannot assert any rights with regard to the fulfilment of the relevant order or service(s) before the agreed advance payment has been made.  
The Customer is obliged to immediately report any inaccuracies in the payment details provided or specified to Progenta. All payments by credit card are subject to the terms and conditions imposed by the relevant card issuer. Progenta is not a party to the relationship between the Customer and the card issuer.

### **Article 29. Right of withdrawal Consumers**

- 29.1 When purchasing Products remotely the Consumer may cancel the Remote Agreement without stating reasons within 14 days. This cooling-off period commences the day after the Product is delivered to the Consumer or after the Product is delivered to a representative of the Consumer (not being a carrier) announced in advance to Progenta.
- 29.2 During the cooling-off period the Consumer is required to handle the Product and the packaging with due care. He may only unpack or use the Product to the extent necessary to assess whether he wants to keep the Product. The basis principle in this respect is that the Consumer may only use and inspect the Product in the manner he would be allowed to in a brick-and-mortar shop. The Consumer is only liable for any decrease in value of the Product resulting from handling the Product in a manner that goes beyond what is permitted in this paragraph.
- 29.3 The Consumer must notify Progenta if he wants to exercise his right of withdrawal within the 14-day cooling-off period (as referred to in paragraph 1), by means of the model withdrawal form made available on Progenta's website. The Consumer must subsequently return the Product within 14 days of the day following the date of the notification. The direct costs of returning the goods are payable by the Consumer, unless agreed otherwise.
- 29.4 The Product must be returned to Progenta complete with all delivered accessories and - if reasonably possible - in its original condition and packaging, in accordance with the reasonable and clear instructions provided by Progenta.
- 29.5 The Consumer must prove that he has exercised the right of withdrawal correctly and in time and that the goods delivered have been returned in time, for example by means of proof of dispatch.
- 29.5 The right of withdrawal does not apply to:
- Services the performance of which commenced before the end of the 14-day cooling-off period with the Consumer's consent, provided that the Consumer has declared that he accepts the loss of his right of withdrawal as soon as Progenta has fully performed the Agreement;
  - Products or Services the price of which depends on fluctuations in the financial market that are beyond Progenta's control;
  - Products manufactured according to the Customer's specifications, e.g. customised products, or that are clearly of a personal nature;
  - Products or Services that cannot be returned in view of their nature, e.g. for hygienic reasons or because they can quickly perish or age;
  - Products that, by their nature, have been irrevocably mixed with other products after delivery.

**Article 30. Costs involved in using the right of withdrawal**

- 30.1 If the Consumer exercises his right of withdrawal, he will bear no more than the costs of returning the goods.
- 30.2 If the Consumer has already paid an amount, Progenta will refund this amount as soon as possible, and within 14 days after the withdrawal at the latest. If the Consumer returns a Product, Progenta will refund the amount as soon as it has received the Product.
- 30.3 Progenta will pay the refund using the same payment method used by the Consumer, unless the Consumer has agreed to a different means of payment. If the Consumer asks Progenta to use a different payment method, the additional costs thereof will be payable by the Consumer.
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