

General terms and conditions of Diffutherm B.V. 2020

Article 1 Definitions

In these Terms and Conditions, the following terms in capital letters shall have the following meanings unless expressly stated otherwise or the context requires otherwise (words in the singular also denote the plural and vice versa)

Service:	a service provided by Diffutherm to the Contractor;
Diffutherm:	the user of these conditions, the limited liability company Diffutherm B.V., registered in the Commercial Register of the Chamber of Commerce under number: 17026977;
Own recipe:	a formula developed, created and produced exclusively by Diffutherm, to which no other articles were added and/or to which no changes were made and which has not been combined with other articles and/or formulas, whether or not at the Ordering party's request
Contractor:	a counterparty, a customer and/or supplier of Diffutherm, as well as any legal entities that may belong to its group of companies;
Delivery:	Delivery within the meaning of Articles 3:84 and 3:90 of the Dutch Civil Code, on condition that the necessary transfer of ownership of the product takes place as soon as the products in question leave the Diffutherm premises or are made available for collection by EXW Diffutherm Hapert in accordance with INCOTERMS 2020®
Offer:	a Diffutherm offer, including but not limited to offers, price lists and other statements, whether or not made by Diffutherm's representatives, agents and/or employees, and relevant information contained in Diffutherm's mailings or published on the Website;
Contract:	the agreements between Diffutherm and the Contractor;
Product:	any goods delivered or to be delivered by Diffutherm to the Contractor, including, but not limited to, the attached labels, the accompanying safety data sheet and packaging materials;
In written form:	by letter or by electronic means (e.g. e-mail), by fax or by any other means of telecommunication capable of transmitting written text in a legible and reproducible manner;
Confidential Information:	the offer, contract, products, services, all correspondence, information, knowledge and/or documents relating to Diffutherm supplied by Diffutherm and/or otherwise in the possession of Contractor or which have come to Contractor's knowledge in the course of preparation, conclusion and/or performance of the contract
Conditions:	These general terms and conditions;
Website:	www.diffutherm.nl / www.diffutherm.com

Article 2. General

1. These conditions shall apply to all present and future offers and cost estimates of Diffutherm and to all agreements made or treatments and measures performed by Diffutherm.
2. These conditions shall apply as well for all additional and repeat orders placed with Diffutherm.
3. The applicability of other general terms and conditions, whether or not used by the Contractor including the conditions of purchase, is expressly rejected. If and to the extent that () other general terms and conditions apply, the conditions listed here shall take precedence in the event of contradictions.
4. The application of article 7:407 paragraph 2 of the Dutch Civil Code is excluded.

5. If any part of these terms and conditions is void or contestable, then this does not affect the validity of the remaining parts of these conditions. In place of the void part, the following applies in accordance with the provisions of article 3:42 of the Dutch Civil Code as agreed, what the parties would have agreed if they had declared the invalidity or nullity. The same applies if and insofar as it turns out that certain non-Dutch laws and/or provisions applicable to the drafting of these conditions are applicable or influence them and is disadvantageous for Diffutherm.
6. Possible deviations from these conditions, which Diffutherm applied or tolerated at any time in favour of the Contractor shall never entitle the Contractor to rely on them later on or to demand such derogation.
7. In the case of incompatibilities, contradictions or differences between the language versions of these conditions, the Dutch original version prevails. In the case of Incompatibilities, contradictions or differences between these terms and conditions and an offer and/or contract the offer or the contract shall be decisive.
8. In the absence of comprehensive evidence to the contrary provided by the contractor, the records and stated data of Diffutherm are binding for the Contractor. In the absence of comprehensive evidence to the contrary provided by the contractor, to determine the scope of the Contractor's payment obligations, the administrative data of Diffutherm shall be decisive. In the absence of comprehensive evidence to the contrary provided by the contractor, the values indicated in the invoice or the consignment note like numbers, sizes and weights are correct.
9. Claims of the Contractor against Diffutherm are not transferable, pawnable or otherwise chargeable, regardless of the legal basis. These restrictions apply to both the property law as well as the law of obligations.

Article 3. Conclusion of the Contract

1. Offers are subject to change and may be informally revoked by Diffutherm even after acceptance by the Contractor. Any commitments made by Diffutherm's representatives shall only be binding on Diffutherm if and after confirmed in writing by an authorized representative of Diffutherm.
2. An offer expires if the product, service or goods to which the offer refers are no longer available.
3. The contract and any amendments thereto shall only be binding on Diffutherm if and after confirmed in writing by an authorized representative of Diffutherm. This shall also apply to any change in formulation, labelling and/or usability requested by the Ordering party at any time. Ordering party may only derive rights from such a contractual amendment if and after it has been confirmed in writing by an authorized Diffutherm representative. If, according to Diffutherm, Ordering party requests, late or at any time, an amendment to the Contract that Diffutherm deems too far-reaching, the Contract shall be deemed to be in full force and effect (unchanged) and Ordering party shall be obliged to accept the products and/or services described therein.
4. Acceptance of an offer deviating from the content of the offer shall be deemed a rejection of the original offer and a new offer not binding for Diffutherm. This shall also apply if the acceptance deviates from the offer only in insignificant points.
5. The Contractor cannot terminate contracts unless the parties have agreed in writing on the compensation owed by the Contractor to Diffutherm for any termination of the contract accepted by Diffutherm.
6. Obvious errors in offers or contracts shall release Diffutherm from the obligation to perform and from the obligation to compensate for the resulting damage, even after the contract has been concluded.
7. Where several products and/or services are offered in one offer, the offer is only valid as a whole and the ordering party is not entitled to accept only a part of the offered products and/or services, regardless of whether a price per product and/or service is stated in the offer.
8. If the contract has not been set out in writing and Diffutherm- with Ordering party's consent- nevertheless begins to execute the contract, the content of the offer shall be construed as contract.
9. Until delivery of the Products and/or performance of the Services, Diffutherm shall have the right to terminate the Agreement without being liable to pay any form of compensation if Diffutherm believes there is a reasonable cause for doing so. Termination shall be in writing. If, according to Diffutherm, Ordering party requests an amendment to the Agreement too late or at any time, which Diffutherm deems too profound, this shall be considered a valid reason within the meaning of this Article.
10. Diffutherm is entitled to make partial deliveries at any time.

General terms and conditions of Diffutherm B.V. 2020

11. The contract is concluded under the suspensory condition, that Diffutherm has sufficient information about the creditworthiness of the Contractor.

Article 3 Execution

1. Unless expressly agreed otherwise in writing, Diffutherm shall use its best efforts based on the information provided by Ordering party and the nature of the Contract.
2. Diffutherm is never in default by the mere expiration of a deadline, including the delivery time. A written notice of default shall always be required for this purpose, and Diffutherm shall be given a reasonable period of grace, i.e. at least two (2) months, to comply.
3. Ordering party shall inform Diffutherm of all facts and circumstances that may be relevant to the proper performance of the Contract and shall provide all data and information requested by Diffutherm without delay, even after Diffutherm has started to perform the Contract.
4. Contractor shall be responsible to Diffutherm for the correctness and completeness of all data and information provided to Diffutherm. Diffutherm shall never be liable for damages resulting from the inaccuracy and/or incompleteness of data and/or information provided by or on behalf of the Contractor.
5. Ordering party shall be obliged to reimburse Diffutherm for all (additional) costs and additional work resulting from any contract modification requested by Ordering party or deemed necessary by Diffutherm. This shall also apply if the necessity of the contract modification is not attributable to Ordering party.
6. In preceding paragraph aforementioned costs and additional work shall be calculated on the basis of the same price-determining factors and the same calculation method that were in use at the time the additional work was carried out or the costs were incurred or - at Diffutherm's discretion - those used when the contract was concluded.
7. If and as soon as Diffutherm is unable to perform the contract in the agreed and/or customary manner due to Ordering party's impediment or for any other reason attributable to Ordering party, Ordering party shall be obliged to compensate Diffutherm for all costs and damages incurred thereby.
8. If Contractor refuses to accept Products at the time of delivery or is negligent in providing the information required for delivery, Diffutherm shall be entitled to store the Products at Contractor's expense and risk. In this case, delivery shall take place from the date of storage, unless an earlier delivery date has been agreed upon, in which case it shall be deemed the date of delivery. After a period of four (4) weeks from the original delivery date, Diffutherm shall be entitled to sell the goods in question (privately). The costs of private sale, any losses and/or lost profits shall be borne by the Contractor.
9. Unless expressly agreed otherwise in writing, the products delivered and/or services rendered by Diffutherm shall be at Ordering party's risk from the time of delivery. The receipt signed by Ordering party or its representative shall serve as conclusive proof of delivery.
10. Unless expressly agreed otherwise in writing, the transport of the products organized by Diffutherm shall be exclusively at the expense and risk of the Ordering party. Ordering party shall be obliged to reimburse Diffutherm for all costs associated with such transport. The costs of any transport insurance shall also be fully borne by Ordering party. Ordering party shall bear the full risk at all times.
11. The Contractor assumes all risks of transport or of the Products (such as the risk of loss, damage and/or depreciation) from the moment the Products leave Diffutherm's warehouse. This shall apply to both direct and indirect damages, even if Ordering party claims that the waybills, transport addresses, etc. contain a clause stating that all transport damages shall be at the expense and risk of the shipper.
12. Diffutherm as a good contractor shall determine the manner of transport, shipment, packaging, etc., unless the Contractor has given further instructions. Ordering party's special requests regarding transport and/or shipping shall only be fulfilled if Diffutherm has accepted these requests in writing and Ordering party has declared that he will bear the additional costs.
13. Unless expressly agreed otherwise in writing, Diffutherm shall be entitled to outsource the execution of the Agreement or parts thereof to third parties or have it executed by third parties, without having to inform Ordering party and/or require Ordering party's consent.

14. Diffutherm shall execute contracts exclusively on behalf of the Contractor. Third parties cannot derive any rights from the products and/or the content of the work performed and, in general, from the way the contracts have been or have not been performed.
15. Any order placed with Diffutherm shall include the authority to engage third parties, also on behalf of the Ordering party, and to accept any limitations of liability of third parties. Diffutherm shall not be liable for the selection and possible defects of such third parties, except in case of intent or deliberate recklessness on the part of Diffutherm. The application of article 6:76 of the Dutch Civil Code is excluded.
16. If Contractor wishes to involve third parties in the execution of the Agreement, this shall only be done with Diffutherm's express prior written consent.
17. Stated delivery times shall not commence until the contract has been concluded in fact, all details have been agreed and Diffutherm has received all information etc. necessary for the execution of the contract.
18. The delivery time shall be based on the time of conclusion of the contract. Where a delay occurs as a result of change in these circumstances, the delivery time extends automatically correspondingly, without prejudice to the following provisions on force majeure.

Article 5. Prices

1. Unless otherwise expressly agreed in writing or otherwise specified in writing, the prices quoted by Diffutherm in each case shall apply only to the respective offers in which they are included and shall be quoted in euros and exclusive of VAT, import duties, special packaging and/or materials, loading and unloading costs, transport, insurance and other taxes or duties.
2. Unless otherwise expressly agreed in writing or otherwise stated in writing, all prices are ex works (EXW) as defined by INCOTERMS 2020®, location Hapert, The Netherlands.
3. All prices are based on the exchange rates, import duties, taxes, levies and other price-determining factors applicable at the time the contract is concluded.
4. Diffutherm expressly reserves the right to change its prices if and insofar as price-determining factors, in particular, the factors mentioned in the previous paragraph of this article, give rise to such changes. This shall also apply if the price-increasing factor was foreseeable at the time of the conclusion of the contract. A price change shall only become effective if the ordering party is informed in writing.
5. Diffutherm is entitled to adjust the applied hourly rates and/or fees at any time.
6. Diffutherm is entitled to demand advance payment. Diffutherm shall have the right to offset the advance payments made by the Ordering party against outstanding invoices, regardless of whether the advance payments relate to the same contract or a contract other than the one to which the outstanding invoice relates.
7. If the execution of the contract covers a period of more than one month, Diffutherm shall be entitled to request an interim payment for the work carried out.

Article 6. Complaints and warranty

1. If and to the extent expressly agreed in writing, Diffutherm guarantees the conformity of the products with the description and the samples shown during the shelf life, except for the following minor deviations
2. The Contractor is obliged to examine the products for defects, quality and quantity - among other things- immediately after receipt.
3. The Ordering party may no longer claim that the delivered goods do not comply with the contract if it has not informed Diffutherm in writing within eight (8) days after delivery. A period of fourteen (14) days after discovery of the defects shall apply to non-visible defects. Such notifications shall be in writing and shall contain a description of the complaint that is as detailed as possible, so that Diffutherm can respond appropriately. Ordering party shall give Diffutherm the opportunity to investigate the complaint (or have it investigated).
4. Diffutherm is not obliged to handle complaints due to minor, customary or technically unavoidable deviations in quality, quantity, colours, design, size, weight etc.
5. If and to the extent Diffutherm determines that the goods delivered are not in conformity with the contract, the goods shall - at Diffutherm's discretion - be delivered again or additionally or a (corresponding) reduction of the purchase price shall be made. If and to the extent Diffutherm delivers replacement goods, Ordering party shall be obliged to return the defective products to Diffutherm immediately at Ordering party's expense.

General terms and conditions of Diffutherm B.V. 2020

6. The Contractor shall not be entitled to return products being subject to a complaint without Diffutherm's prior written and express consent. In this case, Diffutherm shall be free to store the products at Ordering party's expense and risk (with third parties) or to keep them at Ordering party's disposal. The costs and risks of transport for returns shall be borne by the Contractor.
7. Complaints regarding invoices sent by Diffutherm must be made in writing to Diffutherm within (5) five days of the invoice date. After this period, complaints cannot be processed and Ordering party has waived its (alleged) rights.
8. Unless expressly agreed otherwise in writing, Diffutherm shall never guarantee that the products are suitable for a particular purpose.
9. Except in case of intent or deliberate recklessness on the part of Diffutherm, Diffutherm shall not be bound to any other compensation or concessions of any kind within the scope of its warranty obligations.
10. A guarantee granted by Diffutherm becomes irrevocably void if the defects are due to normal wear and tear, improper use, external causes or force majeure.
11. Diffutherm does not assume any warranty for goods or products that are not manufactured by Diffutherm, unless and to the extent that Diffutherm's supplier has issued a warranty that effectively covers the damage incurred.
12. For products that are not exclusively produced according to Diffutherm's own recipe, Diffutherm does not assume any warranty.
13. Diffutherm shall not be liable for the labels and/or the safety data sheet used at the Contractor's request, or the labels and/or the safety data sheet that Diffutherm has received from the Contractor.
14. The ordering party's warranty claim expires if and as soon as the products are no longer in their original packaging, have been processed and/or otherwise altered (in whole or in part).
15. The Ordering party is obliged not to use a product (or have it used) on which it has previously found a defect and to retain it in order to enable Diffutherm to carry out an inspection (or have it carried out) until the complaint has been fully processed by Diffutherm.
16. The submission and/or existence of complaints and returns not accepted in writing by Diffutherm shall never release the Contractor from its payment obligations.
17. If it is determined that a complaint is unfounded, Ordering party shall be obliged to compensate Diffutherm for the costs (e.g. analysis costs) and damages incurred by Diffutherm.

Article 7. Payment and security

1. Unless expressly agreed otherwise in writing, payment shall be made within thirty (30) days of the invoice date. If the invoice amount has not been paid in full on the due date, the Ordering party shall be in default already after the expiry of this period, without any demand or notice of default being required.
2. If Diffutherm has not received payment within the period referred to in paragraph 1 of this article, Contractor shall be liable to pay Diffutherm interest at the statutory commercial interest rate as referred to in Article 6:119a of the Dutch Civil Code, plus 2%; all claims of Diffutherm against Contractor, for whatever reason, shall be due immediately and in full. For the purpose of calculating interest on the amount due, part of a month shall be counted as full month.
3. If Diffutherm has not received payment within the period referred to in paragraph 1 of this Article, Contractor shall be obliged to reimburse Diffutherm for all costs incurred by Diffutherm, in particular for the collection of outstanding amounts:
 - a) Invoices from lawyers for their services, both in and out of court, even if they exceed the amounts determined by the court, costs of bailiffs, trustees and debt collection agencies and all enforcement costs. The extrajudicial costs are set at fifteen percent (15%) of the principal amount, or twenty percent (20%) for a Contractor established outside the Netherlands, with a minimum amount of € 150;
 - b) the costs of filing for bankruptcy.
4. The payments made by the Contractor always serve for settlement of all costs and interest due and subsequently of the longest outstanding invoices, even if the Contractor indicates that the payment relates to a later invoice. All payments shall be made without any deduction, discount or set-off.
5. Diffutherm can at any time, even during the execution of a contract and irrespective of whether one or more due invoices have not been paid or have not been paid in full, require an advance payment or a bank guarantee or at least an equivalent security as security for the payment of the amount due. The Contractor is then obliged to comply with this. In such case, Diffutherm shall also be entitled to suspend the performance of its obligations towards Ordering party until payment or security has been provided. This shall also apply if Diffutherm has reasonable doubts about Ordering party's willingness to pay and/or creditworthiness. If Ordering party refuses to meet Diffutherm's claim, Diffutherm shall be free to consider the contract terminated, without prejudice to its rights for compensation for all damages, costs and lost profits.

6. If at any time an attachment is made against the Contractor, the Contractor shall notify Diffutherm within 24 hours.
7. If the Ordering party is not the end user of the products delivered by Diffutherm, Diffutherm shall be entitled to inform the end user in case of a payment delay of at least three (3) months and, if necessary, to conclude a contract directly with the end user.
8. The Contractor's right to invoke set-off shall be expressly excluded, unless Diffutherm has expressly agreed to a specific set-off in writing and the claim against which the set-off is to be made has been unconditionally accepted by Diffutherm in writing.
9. Diffutherm shall at all times be entitled to assert the rights described in these terms and conditions against an associated company for any claims Diffutherm may have against the Contractor and/or an associated company.
10. A company shall be deemed to be related where 50 % or more of that company belongs to the same owner or is directly or indirectly controlled by that other company and/or 50 % or more belongs to the same group.

Article 8 Retention of title

1. All products shall remain the exclusive property of Diffutherm until all claims that Diffutherm has or will have against Ordering party for any reason whatsoever, including claims pursuant to Article 3:92 paragraph 2 of the Dutch Civil Code, have been settled in full.
2. Diffutherm shall be entitled, without notice of default or judicial intervention, to take possession of the products still in the possession of Ordering party if and as soon as Ordering party is or threatens to be in financial difficulties and/or a circumstance within the meaning of Article 11.2 of these terms and conditions, for whatever reason, in the performance of its obligations towards Diffutherm. Ordering party shall be obliged to reimburse Diffutherm for any costs, damages and loss of profit incurred by Diffutherm as a result of taking back products.
3. The Contractor is obliged to grant Diffutherm free access to its premises and/or buildings at all times in order to test the products and/or exercise Diffutherm's rights.
4. As long as the ownership of the Products has not been transferred to the Ordering party, the Ordering party may not encumber, dispose of, pledge, rent or lease the Products or waive its (actual) power over the Products in any way or by any title whatsoever, subject to the provisions of the following paragraph of this Article.
5. Ordering party shall be permitted to sell the Products in the ordinary course of its business and Diffutherm shall be entitled to the rights of Ordering party vis-à-vis its ordering party(s) until Ordering party has paid for the Products in full and fulfilled its other obligations to Diffutherm, for whatever reason. These rights expressly include all (future) claims and all (future) claims for damage or loss of products. Where applicable, Ordering party shall unconditionally and irrevocably assign such rights to Diffutherm, who hereby accepts such assignment.
6. In addition to the retention of title, Diffutherm shall retain a lien on all products delivered to Ordering party and still owned by Diffutherm to secure the fulfilment of all (future) claims that Diffutherm has or will have against Ordering party, for whatever reason. Ordering party shall, upon Diffutherm's first request, cooperate in the preparation of a deed and its registration.
7. Ordering party undertakes to inform Diffutherm immediately of any action taken by third parties with regard to products belonging to Diffutherm, as well as of the occurrence of any circumstance referred to in Article 11.2 of these terms and conditions.
8. The Contractor is obliged to properly insure the objects and/or products in his possession against theft, fire, explosion, water damage, etc. and to provide Diffutherm with a copy of the relevant policies on first request.
9. Ordering party shall be obliged to keep the products delivered under retention of title with due care and as the identifiable property of Diffutherm.
10. The provisions contained in this article shall not affect Diffutherm's other rights.

General terms and conditions of Diffutherm B.V. 2020

Article 9. Liability

- Diffutherm is only liable for a defect if the defect is due to intent or deliberate negligence by Diffutherm, or if Diffutherm has committed incorrect action for which Diffutherm is seriously liable. Diffutherm's liability towards the ordering party shall at any time be limited to the warranty mentioned in article 6.
- Diffutherm shall not be liable in any event if Ordering party has not, not fully and/or not properly followed the advice and/or instructions of Diffutherm and/or third parties engaged by Diffutherm. In no event shall Diffutherm be liable if Ordering party or its Contractor or the end user:
 - has not followed the instructions for use;
 - has added other products to the product;
 - has not kept the product in the prescribed manner or has used the product for purposes other than those for which it is intended
 - has not properly maintained the product;
 - has ingested the product not intended for human consumption
 - has used the product after its expiry date
 - has transmitted incorrect and/or incomplete data to Diffutherm
 - used the product while it was known or could reasonably have been known to the ordering party that the product had a defect
 - has purchased products which have not been manufactured exclusively according to proprietary recipe
- Diffutherm shall under no circumstances be liable for damages caused by the fact that the goods and/or products (including the labelling and the safety data sheet) do not comply with (local) regulations and/or (safety) requirements, whether or not these are applicable in the place(s) where the Ordering party is located and/or sells the goods. Ordering party shall ensure that the products (including the label and the safety data sheet) and/or the items purchased from Diffutherm for the purpose of resale comply with all (local) regulations and/or (safety) requirements applicable to such resale
- Nor shall Diffutherm be liable for damages if the Ordering party has taken out insurance against such damages or could reasonably have done so. Ordering party shall indemnify Diffutherm against any claims of the insurers in this regard.
- Diffutherm shall not be liable for consulting services regarding the Services and/or products or any other consulting, unless there is an explicit and separate consulting agreement with the Ordering party in which the Ordering party renders compensation for the consulting work to be performed by Diffutherm. If Diffutherm is liable for consulting services under this provision, such liability shall be limited to the invoice amount of the consulting services performed.
- Diffutherm shall never be liable for consequential damages, loss of profit, loss of savings, intangible damages, business or environmental damages.
- If and to the extent that Diffutherm is liable in spite of the provisions of this article, Diffutherm's liability in case of damage to goods shall be limited to the repair and replacement costs, up to a maximum of the principal amount stated on the relevant invoice, and at least up to that part of the invoice to which the liability relates. In case of personal injury and in all other cases, Diffutherm's liability shall at all times be limited to the amount, to which the liability insurance taken out by Diffutherm is entitled.
- If and to the extent that, for whatever reason, no payment is made under the said insurance, Diffutherm's total liability, for whatever reason and on whatever basis, shall be limited to the fee charged by Diffutherm in connection with the services or products to which the liability relates, with a total maximum amount (for all cases together, if there is more than one) of €30,000 (in words: thirty thousand euros)
- Diffutherm shall never be liable for compensation if the ordering party is in default in respect of its obligations towards Diffutherm at the time the damage- causing incident occurs.
- Under penalty of forfeiture of any claim for damages, Ordering party shall notify Diffutherm in writing at the latest within three (3) months after it has discovered or could have discovered the damage.
- Without prejudice to the provisions of article 6:89 of the Dutch Civil Code, any claim by Contractor against Diffutherm, for any reason whatsoever, shall lapse if Contractor has not instituted proceedings on the merits against Diffutherm after one (1) year after the claim arose.
- Ordering party shall indemnify Diffutherm against all costs, damages and interest, including costs for legal assistance, which may be incurred by third parties, whether or not against Ordering party, as a result of any incident, act or omission in or in connection with the performance of the Agreement or in connection with defects in the Products. The ordering party is obliged to take out adequate insurance for this purpose.
- The limitations of liability contained herein shall also apply in the event that Diffutherm is liable for errors by third parties commissioned by Diffutherm or for the malfunction of equipment, software, files, registers or other items used by Diffutherm in the performance of the Contract.

Article 10. Force majeure

- If Diffutherm is unable to fulfil its obligations under the contract due to force majeure or other exceptional circumstances such as fire, strikes, stagnation in the delivery of goods, government measures, unexpected defects and/or disruptions at Diffutherm or its suppliers, Diffutherm shall be entitled to perform the contract in whole or in part at a later date.
- In case of permanent force majeure, which is already immediately apparent, or if the force majeure has lasted longer than three (3) months, the ordering party has the right to dissolve the agreement in whole or in part, without Diffutherm being obliged to pay any (damage) compensation to the ordering party.

Article 11. Suspension and termination

- If and as long as Ordering party fails to fulfil one or more of its obligations to Diffutherm under any Contract and/or these Terms and Conditions and/or the law, Diffutherm shall be entitled to suspend its obligations to Ordering party in whole or in part, whether or not such (threatened) non-performance is attributable to Ordering party. In such case, Ordering party shall be obliged to compensate Diffutherm for all damages, including but not limited to loss of profit, which Diffutherm has suffered or may suffer as a result thereof. If Diffutherm, based on the circumstances known at that time, has deemed a suspension of its obligations to be appropriate, Diffutherm shall not be obliged to pay any compensation to Ordering party if it turns out in retrospect that Diffutherm's appeal to the suspension was not legally valid.
- If and as soon as Ordering party is declared bankrupt or files for bankruptcy, applies for a moratorium or loses control of its assets or parts thereof as a result of attachment, placing under guardianship or otherwise, Diffutherm shall have the right to terminate the Agreement without judicial intervention and without notice of default, unless the receiver or administrator recognises the obligations under the Agreement as a debt payable under the estate.
- In the absence of comprehensive evidence to the contrary provided by the contractor, the item "lost profit" amounts to twenty-five percent (25 %) of the agreed price.
- If Diffutherm suspends or terminates the Agreement on based on this Article, Diffutherm shall in no way be obliged to pay any damages whatsoever to Ordering party.

Article 12. Confidentiality

- Ordering party shall keep the Confidential Information confidential, unless such Confidential Information is publicly known (except as a result of an attributable defect or unlawful act of Ordering party) and must be disclosed pursuant to any applicable law, regulation or other provision, or until Diffutherm has agreed in writing to waive, in whole or in part, the confidentiality and/or non-disclosure obligation
- The contract partner undertakes to use the confidential information exclusively for the purpose for which the confidential information was provided or obtained
- The contractor undertakes to make the Confidential Information available to third parties and/or employees only if and to the extent that this is necessary for the performance of the Agreement and not before the contract partner has imposed a confidentiality obligation on these third parties and/or employees that is equivalent to that contained in these Terms and Conditions. The contractor assures Diffutherm that these third parties and/or employees will continue to comply with this confidentiality obligation.
- Each tender and contract is strictly confidential. The contractor may not use and/or pass them on, not even for marketing and/or commercial purposes.
- If the Contractor is legally forced to disclose certain information or due to a binding regulation or due to binding regulations, the Contractor shall notify Diffutherm in writing in due time before disclosure.
- The confidentiality obligation shall remain in full force and effect even after delivery or termination of a contract.
- In the event of a breach of the provisions of this article, Contractor shall pay Diffutherm, without any summons or notice of default being required, an immediately payable fine of € 50,000 (in words: fifty thousand euros) per breach, increased by an amount of € 5,000 (in words: five thousand euros) per day or part of a day on which the breach continues This shall not affect the Contractor's obligation to compensate Diffutherm for any damage caused or to be caused by the Contractor's actions, if such damage (the sum) exceeds the reported penalty. Diffutherm remains entitled at any time - if necessary in summary proceedings - to demand compliance with the agreement and/or a ban on unlawful acts. The amount of the penalty shall be increased by the statutory commercial interest due from the date on which the penalty becomes due.
- Subject to Diffutherm's prior written consent, Contractor shall be prohibited from maintaining contact with third parties involved in the Contract.

General terms and conditions of Diffutherm B.V. 2020

Article 13. Transfer

1. Diffutherm is entitled to transfer, assign or charge its rights from an offer or contract or its legal relationship arising therefrom. The contractor's consent is deemed as given, contractor agrees to provide Diffutherm with all necessary cooperation, assistance, information, documents and data at all times.

Article 14. Applicable law and choice of jurisdiction

1. Exclusively Dutch law shall govern all actions of Diffutherm, including agreements made by Diffutherm. The applicability of the Vienna Convention on Contracts for the International Sale of Goods (CISG) and/or other international sales contracts for movable goods is expressly excluded.
2. All disputes arising from the agreements concluded between the parties shall be settled exclusively by the competent Dutch court in the district of Oost-Brabant.
3. If the Contractor is established, has a branch and/or trades in a country that is not a member of the European Union and/or in a situation that does not fall within the scope of Regulation (EU) No. 1215/2012 of 12. December 2012 or an equivalent regulation, Diffutherm is entitled, without prejudice to the provisions of the previous paragraph of this article, to submit a dispute to the Netherlands Arbitration Institute in accordance with the Arbitration Rules of that Institute. The arbitration panel shall consist of one arbitrator. The arbitral tribunal shall be appointed in accordance with the list procedure. The place of arbitration shall be Eindhoven, the Netherlands. The proceedings shall be conducted in English.
4. If and as soon as Diffutherm has initiated proceedings at the Netherlands Arbitration Institute, the latter shall have exclusive jurisdiction to settle the dispute in question and the Dutch judge in the district of Oost-Brabant is no longer competent.
5. Without prejudice to the provisions of this Article, Diffutherm shall also be entitled to bring an action before another competent Dutch court in the event of cross-border collection.
6. Interim unilateral alterations of present Terms and Conditions by Diffutherm are allowed at any time. The contractor has the right to terminate the contract in the event of interim alteration of present Terms and Conditions.
7. The most recent version of the terms and conditions is available on the website www.diffutherm.nl