

## GENERAL TERMS AND CONDITIONS OF VAN RAAM USA CORPORATION

### 1 Definitions

- 1.1 Agreement: shall mean the agreement between the Customer and Van Raam for the delivery of Van Raam Products.
- 1.2 Customer(s): shall mean any natural person or business entity, including dealers and distributors, with whom Van Raam and its employees deal in the course of its business, including representative(s), agent(s), successor(s) and including visitors of the Van Raam website.
- 1.3 Error: shall mean any substantive failure of the Products to comply with functional or material technical specifications set forth in the Product user manual, issued by Van Raam.
- 1.4 Van Raam: shall mean Van Raam North America Inc., a Delaware corporation.
- 1.5 Party or Parties: shall mean Van Raam and Customer, individually or collectively.
- 1.6 Terms and Conditions: shall mean these General Terms and Conditions of Van Raam.
- 1.7 Product(s): shall mean the Van Raam special needs bicycles and derivative products thereof, including tricycles, wheelchair bikes, tandems, double rider bikes, sitting bicycles, scooter bikes, recumbent bikes, low step through bikes, walking aids, and transport bikes, and/or any accessories and other products and parts provided pursuant to the Agreement.

### 2 Applicability

- 2.1 These Terms and Conditions apply to all offers of Van Raam and exclusively govern

the relationship between Van Raam and Customers, and any Agreement or other agreements between Van Raam and Customers, including dealer and/or distribution agreements, and any subsequent amendment to any agreement or the Agreement. These Terms and Conditions shall be applicable even if Van Raam uses third parties to deliver Products.

- 2.2 No other terms and conditions shall be binding upon Van Raam unless accepted by it in writing. Van Raam expressly rejects any general terms and conditions used by Customer. Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void and do not bind Van Raam.
- 2.3 Van Raam reserves the right to amend these Terms and Conditions at any time. New or amended general terms and conditions shall be applicable upon thirty (30) days' notice to Customer.
- 2.4 Van Raam's resellers or dealers are also subject to the Dealer Agreement Van Raam dealers. In case of inconsistencies, the following order of descending priority will apply:
- Agreement;
  - Reseller or dealer agreement;
  - These Terms and Conditions.

### 3 Offers and Acceptance

- 3.1 All offers of Van Raam are non-binding and may be revoked at any time, unless Van Raam stated otherwise in writing. Any amendments made by Van Raam in writing shall entail a new offer, automatically revoking the previous offer. Any amendments by Customer of a Van Raam offer will be deemed a new offer by Customer, which Van Raam may accept or reject in its sole discretion. Offers will only be deemed accepted by Van Raam if it does so in writing.

- 3.2 All information, data or undertakings provided verbally or in documentation, price lists or other material related to Products, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included and confirmed in writing in the Agreement.
- 3.3 All offers are based on the information and documentation provided by Customer, and Van Raam may rely on the accuracy thereof.
- 3.4 Customer hereby understands and accepts that all samples, drawings, models, figures, dimensions, weights or any other specifications for Products estimates only, although Van Raam will use best efforts to ensure their accuracy.

#### **4 Prices and Taxes**

- 4.1 Configurations and prices of Products are subject to change at any time, and Van Raam shall at all times be entitled to modify price lists, brochures, printed matter, quotations and other documents. Customer agrees to any such changes of prices or configurations if it does not object in writing to Van Raam within seven (7) business days of when Customer receives an invoice incorporating said changes. However, Customer will not be entitled to object modifications to configurations and prices made by Van Raam as a result of changes or modifications requested by Customer, or because of circumstances that were unforeseeable at the time the Agreement was entered into, including but not limited to a newly enacted right or obligation under any law, or a material increase in the price of raw materials.
- 4.2 All prices are exclusive of, and Customer shall pay, all taxes, duties, levies or fees, or other similar charges imposed on Van Raam or Customer by any taxing authority (other than taxes imposed on Van Raam's income), related to Customer's order, unless Customer has provided Van Raam with an

appropriate resale or exemption certificate for the delivery location, which is the location where Products are received. In case of changes in law such that a tax is levied that is or becomes irrecoverable with a consequent increase to the costs to Van Raam of delivering the Products, Van Raam is entitled to increase its prices accordingly and retro-actively.

- 4.3 The prices or fees quoted are in U.S. dollars, or in another currency if stated by Van Raam in writing. Customer shall bear any exchange rate risk, unless otherwise agreement in writing.
- 4.4 Unless otherwise agreed in writing, prices do not include the cost of packaging and transportation of the Product.
- 4.5 All Agreements for the delivery of Products to Customer shall be treated as separate agreements.

#### **5 Payment**

- 5.1 Unless agreed upon in writing in the Agreement, full payment of all sums due to Van Raam must be completed upon delivery of the Product. Customer agrees to pay, without the right to set-off any amount, all invoiced amounts within fourteen (14) days of the invoice date, unless stated otherwise in the Agreement or on the invoice. A credit of two percent (2%) over the invoiced Product price towards future Product purchases will be issued to Customer, if payment has been received by Van Raam within eight (8) days of the invoice date. All amounts will be due immediately, in case Customer terminates or suspends all or a substantial portion of its business activities, becomes insolvent, admits its inability to pay its debts, or in case of the voluntary or involuntary filing of a petition for or adjudication of bankruptcy of Customer under any federal, state or municipal bankruptcy or insolvency act, the appointment of a receiver, trustee,

- custodian, or liquidator, or any act or action constituting a general assignment by Customer of its properties and/or interest for the benefit of creditors.
- 5.2 Disputes of invoices must be submitted in writing to Van Raam, explaining in detail why the invoice is disputed, within five (5) days of the date of the invoice. If no dispute has been received within this time period, the invoice will be deemed accepted by Customer.
- 5.3 Where payment is not made within the terms set forth in this article, contractual interest shall be owed at a rate of 2% a month, or the highest rate allowed by law, if lower, with effect from the first day following expiration of the payment term referred to in this article; part of a month shall be considered a full month.
- 5.4 Payments made by Customer shall always be used first to meet all the interest and costs owed and subsequently for the settlement of claims under the Agreement which have remained outstanding for the longest period of time, even when Customer specifies that the payment relates to another claim.
- 5.5 Customer shall not be entitled to refuse to discharge or to suspend the discharge of its payment obligations on account of alleged disturbance of, defect or Error in the Products or on any other account whatsoever.
- 5.6 If Van Raam believes that Customer's financial position and/or payment performance justifies such action, Van Raam has the right to demand that Customer immediately furnish security in a form to be determined by Van Raam, including an Article 9 UCC security right, and/or make an advance payment. If Customer fails to furnish the desired security, Van Raam has the right without prejudice to its other rights, to immediately suspend performance of the Agreement, and that which Customer owes to Van Raam for whatever reason will become immediately due and payable.
- 5.7 Customer is not allowed to sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of, either voluntarily or involuntarily, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of any Products, unless all amounts due to Van Raam under the Agreement or otherwise, are fully paid off.
- 5.8 Customer shall be liable for amounts which Van Raam incurs to collect payment, including without limitation, collection agency fees, reasonable attorneys' fees and arbitration or court costs.
- ## **6 Lead Times, Implementation, Risk of Loss, Changes**
- 6.1 Van Raam shall deliver the Products in accordance with the Agreement. Delivery and/or development times and dates are merely estimates, as well as lead times or any other deadlines, and Van Raam cannot be held liable for any damages as a result of delay in delivery of the Products. Unless otherwise agreed in writing, failure to meet delivery times or delivery dates stated shall never be considered fatal, and if the time for delivery is exceeded, Customer shall not be entitled to cancel or terminate the Agreement, or to claim any damages. Any agreed upon delivery dates will automatically be extended proportionally in case of amendments to the Agreement or suspension of the Agreement, Customer's failure to perform under the Agreement, or in case of any other delay causes by Customer or otherwise beyond control of Van Raam, including in case of force majeure events.
- 6.2 If any delivery period or lead time risks to be exceeded, Van Raam will inform Customer

- as soon as reasonably possible and the Parties will enter into consultations in order to determine a new delivery period.
- 6.3 Van Raam is entitled to engage the services of third parties for the performance of an Agreement. Van Raam is entitled to make partial deliveries and invoices these deliveries separately.
- 6.4 Unless agreed in writing differently, delivery of Products shall be made DAP at the location listed on the invoice, as this term is specified in the Incoterms 2020. Customer must accept delivery of Products during normal business hours, failing which all costs arising thereof (including storage charges and freight charges) shall be charged in conformity with Van Raam's rates or local charges.
- 6.5 Immediately upon receipt of the Products, Customer shall inspect it for defects and non-conformance with the Agreement and will notify Van Raam in writing within five (5) days of receipt of a Product, of any defects or non-conformance. After such five (5) day period, Customer shall be deemed to have irrevocably accepted the Products, if not already previously accepted. After acceptance, Customer shall have no right to reject the Products for any reason or to revoke acceptance. Customer hereby agrees that a five (5) day period is a reasonable amount of time for inspection and revocation.
- 6.6 In the case of any alleged shortage, errors, defects or non-conformance with the Agreement, Customer shall allow Van Raam to inspect the Products subject to the alleged defect.
- 6.7 Van Raam is authorized to deliver Products that deviate slightly from the Products described in the agreement, but are substantially the same in technical and/or functional terms.
- 6.8 Notwithstanding the above, Van Raam will have no obligation to replace or repair any Products if the Products have been handled, installed, or stored improperly by or on behalf of the Customer, or if the Customer has not fully met its obligations under the Agreement and/or these Terms and Conditions.
- 6.9 The risk of loss or damage of Products shall pass to Customer at the moment of delivery in accordance with Section 6.4 above or when the Customer, or an agent or subcontractor acting on its behalf, has effectively assumed control of the Products, whichever is sooner, even if Van Raam has not yet transferred ownership thereof. Any damage to the Products, or any loss related thereto, shall be for the risk and account of the Customer.
- 6.10 THE SOLE AND EXCLUSIVE REMEDY FOR ALLEGEDLY DEFECTIVE PRODUCTS IS THE REPLACEMENT OR REPAIR OF SUCH PRODUCTS OR PARTS OF SUCH PRODUCTS, AT NO COSTS FOR CUSTOMER.

## **7 Intellectual Property Rights**

- 7.1 All intellectual property rights, e.g., patents, copyrights, trademarks, designs, models, know-how and all proprietary and/or commercial rights and trade secret rights, tools, documentations, etc., in relation to the Products, including modifications thereto, delivered and/or used by Van Raam, are owned by Van Raam or its licensor(s). No transfer or other grant of rights is given to Customer, unless explicitly stated in writing. This applies even if Products have been specifically designed, developed or compiled for Customer.
- 7.2 Unless otherwise agreed in writing, Customer may not make modifications to the Products, nor allow or enable any third parties to do so. Customer may not, nor may enable and/or allow third parties to copy, translate, or reverse engineer any Products.
- 7.3 Customer shall not be permitted to affix any other trademark to the Products, or to remove any copyright, trademark or other

proprietary rights notices on same, or to use the relevant mark in any other way, or to register it in Customer's own name, and specifically Customer shall not be permitted to register any patent involving, based upon, or for any of the Products.

- 7.4 If intellectual property rights arise during the execution of the agreement between Van Raam and the counterparty, then the intellectual property rights, including copyright, will rest with Van Raam. Insofar as the intellectual property rights are vested with the counterparty by virtue of the law, the counterparty will transfer these intellectual property rights in advance to Van Raam and if necessary, the counterparty will cooperate with this transfer and will furthermore grant Van Raam an irrevocable power of attorney in advance to enable Van Raam to do everything that is necessary, so that the intellectual property rights rest with Van Raam. To the extent permitted by law, the counterparty waives any personality rights that remain with the counterparty, or the counterparty undertakes not to exercise these personality rights in the course of economic transactions.
- 7.5 Customer agrees that all materials created by Customer relating to the Products, are ordered or commissioned by Van Raam, and Van Raam is and will be considered the sole and exclusive owner of all intellectual property rights related to the Products for all purposes. To the extent any creations by Customer relating to the Products do not qualify as "work made for hire", Customer hereby irrevocably assigns, transfers, and otherwise conveys to Van Raam in perpetuity, all right, title, and interest in and to such works, including all copyrights and other intellectual property rights therein.

## **8 Specific Customer's Obligations**

- 8.1 If applicable, Customer shall timely and not later than the execution of the Agreement, provide Van Raam with all desired technical details and information relating to each order.
- 8.2 Customer understands that Van Raam's Products meet European CE requirements. Customer shall inform Van Raam of any additional local, state or federal legal requirements regarding the Product, if any, before entering into the Agreement. Van Raam will assess such local, state and federal legal requirements and will inform Customer whether such requirements are technically and/or commercially feasible, and what the related costs and expenses will be to implement the desired changes.
- 8.3 The Products may only be equipped with parts authorized in writing by Van Raam. Customer is explicitly not permitted to fit Products with spare parts or accessories other than those prescribed in the Van Raam's instructions for use. Under no circumstances may Customer fit the Products with an engine that has not been approved by Van Raam in writing. Customer is aware that the Products have only been tested for compatibility with Van Raam's engines.
- 8.4 The breach of an obligation referred to in this Article 8, shall have the following consequences:
- 8.4.1. The Van Raam warranty will terminate with immediate effect;
  - 8.4.2. Van Raam will have the right to terminate (partially or fully - at Van Raam's discretion) all Agreements and any obligations arising from those Agreements with immediate effect, without being obliged to pay any compensation.

## 9 Confidential Information

- 9.1 Confidential Information means (i) the existence and terms of any agreement between the Parties and (ii) any non-public, confidential or proprietary information relating to a disclosing Party, whether or not technical in nature, including any that is designated by the disclosing Party as Confidential Information at the time of its disclosure, either by a written or visual confidentiality designation, or otherwise if such information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how which: (i) is in the public domain at the time of disclosure or becomes available thereafter to the public without restriction, and in either case not as a result of the act or omission of the receiving Party; (ii) is rightfully obtained by the receiving Party from a third party without restriction as to disclosure; (iii) is lawfully in the possession of the receiving Party at the time of disclosure by the disclosing Party and not otherwise subject to restriction on disclosure; (iv) is approved for disclosure by prior written authorization of the disclosing Party; or (v) is developed independently and separately by either Party without use of the disclosing Party's Confidential Information.
- 9.2 Each Party agrees that it will safeguard the confidentiality of the Confidential Information supplied by the other Party and that it will observe the same due care with respect to such information as it would observe with respect to its own Confidential Information. The other Party shall not sell, copy and/or distribute in any way Confidential Information to third parties, without disclosing Party's prior written consent, which consent may be granted or

withheld in such Party's sole and absolute discretion.

- 9.3 Each Party agrees that it will restrict the circle of employees or third parties it retains who have access to the other Party's Confidential Information as much as possible and provide such access only on a need-to-know basis and after binding such employees and third parties to the same level of confidentiality as set forth in these Terms and Conditions.
- 9.4 Immediately following the receipt of a written request to this effect by the disclosing Party the receiving Party will return any and all Confidential Information received from the disclosing Party or destroy such Confidential Information, if the disclosing Party so requests.

## 10 Duration, Termination and Suspension of Performance

- 10.1 Customer cannot terminate the Agreement for convenience, except as agreed upon in writing by Van Raam and Customer.
- 10.2 If Customer believes that Van Raam has failed to perform under the Agreement for a breach not related to an event covered by Van Raam warranty, it must notify Van Raam in writing, explaining in detail the alleged shortcomings, and allow ninety (90) days for Van Raam to cure if it has failed to perform. If Van Raam fails to cure the alleged breach of the Agreement within this time period, Van Raam will, at its discretion, either replace the Product (s) subject to the default, or will allow Customer to return the Product in exchange for a refund of all sums paid for the Product.
- 10.3 If Customer fails to make payment of any amount due on the due date or Customer otherwise fails to perform its obligations under the Agreement or these Terms and Conditions, or if Van Raam reasonably expects that Customer will not fulfill its obligations, Van Raam may in its sole and



absolute discretion suspend performance under its Agreement with Customer and/or terminate the Agreement (in whole or part), with immediate effect, without being liable for any damages to Customer.

- 10.4 Notwithstanding the above and without any obligation to return any payments or prepaid expenses, Van Raam may terminate its relationship with Customer, or may terminate or suspend Van Raam's delivery of Products at any time: (i) if Customer is in breach of these Terms and Conditions and/or the Agreement; (ii) if Van Raam reasonably suspects that Customer is using the Products to breach the law or infringe third party rights; (iii) for a force majeure event that continues for more than ninety (90) days upon notice; (iv) if Customer fails to pay any amounts due to Van Raam; (v) if required due to change in laws/regulation by a regulator or authority with a lawful mandate; (vi) in respect to a particular Van Raam Product, upon thirty (30) days' notice if Van Raam decides to cease offering that Product; (ix) the bankruptcy of the Customer has been applied for; (x) an attachment is levied on the goods of Customer; (xi) Customer is liquidated or discontinued; and/or (xii) Customer is in violation of any applicable laws or regulations.
- 10.5 Upon suspension and/or termination, all invoiced sums will become immediately due and payable. In the event of suspension of performance by Van Raam, Van Raam may at its sole discretion resell any Products ordered by Customer, at a public or private sale without notice to Customer and without affecting Van Raam's rights to hold the Customer liable for any loss or damage caused by breach of contract by Customer, including expenses paid or irrevocably committed to by Van Raam, and loss of profits.
- 10.6 If circumstances arise with regard to persons and/or materials that Van Raam uses or tends to use for the performance of

the Agreement, which are of such a nature that performance of the Agreement is impossible or so inconvenient and/or becomes disproportionately expensive, that compliance with the Agreement can no longer be reasonably justified, Van Raam is authorized to terminate the Agreement, without being obliged to pay compensation for the damage that Customer Raam may suffer as a result.

## 11 Warranty

- 11.1 Unless otherwise agreed upon in writing, Van Raam warrants its Products against Errors for one (1) year from the date of delivery, during which time it will use its best efforts to repair any Errors as may be found during such period. However, any such problems encountered in the use of the Products as arise out of user errors or inexpert use on the part of Customer and any problems involving any such Errors as could have been brought to light upon the initial inspection as set forth Section 6.5, or out of any other causes that are not attributable to Van Raam, shall be for Customer's risk and account.
- 11.2 The warranty will be valid only if the Product has been installed and maintained conform the instructions of Van Raam, and the Product has been used by Customer for its intended use only, as described in the written documentation of Van Raam.
- 11.3 In case of a defect, use of the Product must be halted immediately, unless instructed by Van Raam in writing otherwise, and Van Raam should be informed immediately, but not later than fourteen (14) days after the defect first occurred, was first discovered, or reasonably should have been discovered. Any warranty claim must be substantiated by clear pictures and explanation of the experienced defect, pointing out the expected cause.

- 11.4 Customer must allow Van Raam to inspect the Product and any defective parts must be made available for inspection by Van Raam and should be shipped to Van Raam upon first request, failure of which will void the warranty claim.
- 11.5 The rights of the Customer with respect to the Van Raam warranty are restricted to a lack of conformity caused by defects, faulty materials and failures in the Products or workmanship which appear under proper use, in conformity with Van Raam instructions and the manual. Additionally, the warranty does not apply to third party parts and components that are part of a Product. Those third party parts and components will be covered by the warranty of the supplier and/or manufacturer, if any.
- 11.6 At its sole discretion, Van Raam will repair or replace any Errors and/or defective Products during the warranty period.
- 11.7 The Van Raam warranty includes exchange shipping costs of defective parts, exclusive of import duties and taxes, if any. Replaced parts will become property of Van Raam.
- 11.8 The Van Raam warranty is personal and cannot be transferred or assigned by Customer without prior written approval of Van Raam.
- 11.9 The warranty hereunder does not cover faults or damages arising from:
- normal wear and tear;
  - faulty, careless, or improper treatment;
  - faulty and unauthorized commission;
  - improper storage or unloading;
  - unauthorized use or misuse of Products;
  - unauthorized modifications, installation, repairs or other work on Products, including installation of replacement parts, without prior written approval by Van Raam;
  - improper maintenance;
- failure by Customer to comply with Van Raam instructions, guidelines and manuals;
  - improper, defective or extreme environmental circumstances;
  - a failure caused by parts supplied by or on behalf of Customer, or parts specifically requested by Customer.
- 11.10 The Van Raam warranty does not cover faults or damages resulting from Products or part of Products that were specifically designed and/or manufactured by Van Raam for Customer in accordance with Customer's specifications. Additionally, any damages or losses resulting from changes in design or materials requested by Customer that has affected the quality of the Products and/or its parts negatively, as indicated by Van Raam in writing, will not be covered by the Van Raam warranty.
- 11.11 Subtle color variations in the coating of lacquer of the Products and degradation in the coating of lacquer of the Products are naturally occurring, and are not considered defects or Errors, and are not covered by the Van Raam warranty.
- 11.12 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VAN RAAM, ITS LICENSORS, THIRD PARTY SUPPLIERS, AND AFFILIATES HEREBY DISCLAIM ALL WARRANTIES, CONDITIONS, CLAIMS OR REPRESENTATIONS WITH RESPECT TO THE VAN RAAM PRODUCTS WHETHER EXPRESS, IMPLIED OR STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT, COMPATIBILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM VAN RAAM OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS.



## 12 Liability, Limitation of Damages and Indemnification

- 12.1 CUSTOMER IS SOLELY RESPONSIBLE AND LIABLE FOR ALL ACTIVITIES WITH VAN RAAM'S PRODUCTS BY CUSTOMER AND ITS USERS. VAN RAAM DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY IN RELATION TO THE ACTS AND OMISSIONS OF CUSTOMER AND ITS USERS REGARDING VAN RAAM'S PRODUCTS. NEITHER VAN RAAM NOR ITS OFFICERS OR EMPLOYEES OR AFFILIATES MAY BE HELD LIABLE WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER FORM OF LIABILITY FOR ANY CLAIM, DAMAGE, OR LOSS, (AND CUSTOMER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION), ARISING OR RELATING TO ALL SUCH ACTS AND OMISSIONS, UNLESS THOSE ARE THE RESULT OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD OF VAN RAAM.
- 12.2 IN NO EVENT SHALL VAN RAAM, ITS AFFILIATES OR ITS LICENSORS BE LIABLE, HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER FORM OF LIABILITY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PPRODUCTIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, BUSINESS, SALES, PROFITS (WHETHER ACTUAL OR ANTICIPATED), LOSS OF OR CORRUPTION TO DATA, OR INTERRUPTION OF BUSINESS.
- 12.3 UNLESS RESULTING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY VAN RAAM, VAN RAAM WILL NOT BE LIABLE FOR ANY THEFT OR LOSS OF ITEMS OF CUSTOMER OR THIRD PARTIES, STORED INSIDE PRODUCTS, OR HELD BY VAN RAAM AT THE REQUEST OF CUSTOMER, WHICH INCLUDES CARGO, EQUIPMENT, RECORDS AND DOCUMENTS.

- 12.4 NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, VAN RAAM'S AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY KIND SHALL NOT EXCEED THE TOTAL PAID BY CUSTOMER FOR THE PRODUCTS IN CONNECTION TO WHICH THE DAMAGING EVENT OCCURRED.
- 12.5 THE LIMITATIONS ON VAN RAAM'S LIABILITY ABOVE SHALL APPLY WHETHER OR NOT VAN RAAM, ITS EMPLOYEES, LICENSORS OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES ARISING.

## 13 Indemnification

- 13.1 CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD VAN RAAM, ITS PRESENT AND FUTURE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS AND ITS AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, PENALTIES, LIABILITY AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES, IN CONNECTION WITH OR ARISING OUT OF ANY USE OF THE VAN RAAM PRODUCTS, OR BREACH OF THIS AGREEMENT, BY CUSTOMER OR ITS USERS. BOTH ONLY TO THE EXTENT THAT SUCH WAS NOT A RESULT OF GROSS NEGLIGENCE OR WILFFUL MISCONDUCT BY VAN RAAM.
- 13.2 CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD VAN RAAM, ITS PRESENT AND FUTURE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS AND ITS AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS AND THREATENED CLAIMS BY ANY THIRD PARTY, INCLUDING EMPLOYEES OF CUSTOMER ARISING OUT OF, UNDER OR IN CONNECTION WITH (1) THE DEATH OR BODILY INJURY OF ANY THIRD PARTY, INCLUDING ANY AGENT, VISITOR, OR GUEST OF CUSTOMER, OR, (2) THE DAMAGE, LOSS OR DESTRICTION OF ANY

TANGIBLE PERSONAL OR OTHER TYPE OF PROPERTY, BOTH ONLY TO THE EXTENT THAT SUCH WAS NOT A RESULT OF GROSS NEGLIGENCE OR WILFFUL MISCONDUCT BY VAN RAAM.

#### **14 Severability**

If any provision of these Terms and Conditions, the Agreement or any other agreement between the Parties, is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (i) such provision shall be deemed to be restated to reflect as nearly as possible the original meaning of the terms or agreement in accordance with applicable law, and (ii) the remaining terms, provisions, covenants and restrictions shall remain in full force and effect.

#### **15 Force Majeure**

Van Raam shall not be liable or responsible to Customer, or be deemed to have defaulted under or breached the Agreement, for any failure or delay in fulfilling or performing any term of the Agreement, when and to the extent such failure or delay is caused by or results from acts beyond Van Raam's reasonable control, including, without limitation, the following force majeure events: (a) acts of God; (b) flood, fire, earthquake, other potential disaster(s) or catastrophe(s), such as epidemics and pandemics, including Covid19 related causes, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions, whether or not related to Covid19 or any other pandemic; (e) embargoes or blockades in effect on or after the effective date of the Agreement; and (f) national or regional emergency; (g), power outages or shortages, lack of warehouse or storage space, inadequate transportation services,

or inability or delay in obtaining supplies of adequate or suitable materials; and (h) other events beyond the reasonable control of Van Raam. Van Raam will not be liable for any delay in performing or failure to perform any of its obligations under these Terms and Conditions or the Agreement caused force majeure events. Van Raam will notify Customer promptly in writing of the reasons for the delay or stoppage (and the likely duration) and will take all reasonable steps to overcome the delay or stoppage.

#### **16 Assignment**

Customer is not permitted to assign, delegate or otherwise transfer the Agreement or any rights hereunder. Any such attempted assignment, delegation or transfer will be null and void. Van Raam is permitted at its sole discretion to assign the Agreement or any rights or obligations hereunder to any third party, without giving prior notice.

#### **17 Entire Agreement**

The Agreement and these Terms and Conditions contain the entire agreement between Van Raam and Customer regarding Customer's purchase of the Products, and supersedes and replaces any previous communications, representations or agreements, or Customer's additional or inconsistent terms, whether oral or written.

#### **18 No Waiver**

The failure to exercise, or delay in exercising, a right, power or remedy provided by the Agreement or these Terms and Conditions or by law shall not constitute a waiver of that right, power or remedy. If Van Raam waives a breach of any provision of these Terms and Conditions or the Agreement, this shall not operate as a waiver of a subsequent breach or that provision or as a waiver of a breach of any other provision.

## 19 No Beneficiaries

Any agreement between the Parties is for the sole benefit of the Parties thereto and, except as otherwise contemplated therein, nothing therein expressed or implied shall give or be construed to give any person, other than the Parties thereto, any legal or equitable rights thereunder.

## 20 No Partnership

Nothing contained in any agreement between the Parties shall be read or construed so as to constitute the relationship of principal and agent or of partnership between the Parties. Neither of the Parties may pledge or purport to pledge the credit of the other Party or make or purport to make any representations, warranties, or undertakings for the other Party.

## 21 Injunctive Relief

Customer acknowledges that Van Raam shall suffer irreparable injury in case of breach of the obligations under Articles 7 and 9. Accordingly, in the event of such breach, Customer acknowledges that Van Raam will be entitled to injunctive relief in any state or federal court of competent jurisdiction within the State of New York. Customer further submits to the personal jurisdiction of such courts for the purposes of any such action.

## 22 Governing Law and Arbitration

Unless stated otherwise in writing, any and all agreements between the Parties shall be governed by and construed in accordance with the laws of the State of New York, notwithstanding conflict of law principles, and without giving effect to the United Nations Convention on the Contracts for the International Sale of Goods. All disputes and controversies arising out of or relating to these Terms and Conditions or the

relationship of the Parties shall be finally and bindingly resolved under the International Arbitration Rules of the American Arbitration Association in front of a sole arbitrator. The place of arbitration shall be New York, New York. The language of the arbitration shall be English. Any award, verdict or settlement issued under such arbitration may be entered by any party for order of enforcement by any court of competent jurisdiction. ANY CAUSE OF ACTION AGAINST VAN RAAM, REGARDLESS WHETHER IN CONTRACT, TORT OR OTHERWISE, MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.