

General Terms of sale and delivery

Plugwise Consumer/SME

Article 1 - General – definitions

The following definitions shall have the following meanings:

Buyer:	the party that wishes to enter or enters into an Agreement with Plugwise.
Agreement:	the agreement between Buyer and Plugwise, and any other (legal) relationships between Plugwise and Buyer.
Parties:	Plugwise and Buyer.
Plugwise:	Plugwise B.V., a private company with limited liability, incorporated under the laws of The Netherlands, having its statutory seat in Sassenheim, The Netherlands and its place of business at Wattstraat 56, 2171 TR in Sassenheim, registered with the Dutch Chamber of Commerce under number 28.11.32.18.
Plugwise System:	system supplied by Plugwise for measuring energy usage, including Software, all the peripheral equipment, extensions to the Plugwise System and the supplied documents.
Software:	the computer program Source, the Feature Keys, the apps (pc or mobile device) and any updates of the computer program Source and the apps including the corresponding data carriers and documents.

Article 2 - Applicability

- 2.1 These general conditions apply to all offers made by Plugwise, to orders placed with Plugwise, and to the Agreement.
- 2.2 Any general conditions used by the Buyer shall not apply to the Agreement between the Parties.
- 2.3 Plugwise reserves the right to amend these general conditions unilaterally. These amendments shall immediately come into effect after the first publication on Plugwise's website. These amendments do not influence Agreements already in place.

Article 3 - Agreement

- 3.1 All offers made by Plugwise and orders placed with Plugwise, in whatever form, are without engagement and revocable. Offers and orders are in addition subject to apparent errors/mistakes, amendments and subject to availability.
- 3.2 Plugwise is not bound to its offers or proposals if Buyer can reasonably understand that said offer or proposal, or any part thereof, contains an apparent mistake or clerical error.
- 3.3 Plugwise shall at all times be entitled to refuse an order, entirely or partly, without notice and without being liable to pay compensation in any way as a result.
- 3.4 After receipt of an order from Buyer, in whatever form, Plugwise confirms the order to Buyer in writing and the Agreement shall become effective. The invoice or the confirmation by e-mail shall also explicitly serve as a written confirmation. The Agreement shall be deemed to be concluded when Plugwise has executed the delivery of the Plugwise System.
- 3.5 Plugwise reserves the right to have the Agreement or parts thereof executed by third parties

Article 4 - Prices and Price Increases

- 4.1 All prices are in Euros and are inclusive of turnover tax, import duties, other taxes, levies and duties.
- 4.2 The forwarding costs of the Plugwise System are not included in the price of the Plugwise System. These costs shall be mentioned separately on the website, on the order form and/or otherwise.
- 4.3 Additional costs, such as urgent dispatches or separately agreed services shall be mentioned on Plugwise's website, on the order form and/or otherwise.
- 4.4 If faced with price increase(s) Plugwise shall at all times be entitled to pass them on to the Buyer. If the price increase is effected within three (3) months after conclusion of the Agreement, the Buyer shall be entitled to dissolve the Agreement within fourteen (14) days after announcement of the price increase by Plugwise.

Article 5 – Delivery

- 5.1 Plugwise shall deliver its Products at the location indicated by the Buyer.
- 5.2 Plugwise determines the delivery method, unless the Parties have explicitly agreed otherwise. The delivery method shall be mentioned on Plugwise's website and/or on the order form.
- 5.3 Delivery periods stated are indicative and shall not be regarded as deadlines, unless Parties explicitly agree otherwise in writing. If a date of delivery is exceeded, Plugwise shall therefore not be in default and consequently, exceeding a delivery date by Plugwise shall not result in liability to pay compensation on the part of Plugwise. The Agreement can neither be dissolved as a result of the above.
- 5.4 Plugwise shall at all times be entitled to deliver an order in parts.
- 5.6 The risk of loss, destruction and/ or damage of Plugwise Products and/ or Plugwise System are born by Buyer from the time the Plugwise Products and/ or Plugwise System are placed in care of the first carrier.

Article 6 - Payment

- 6.1 Payment must take place within the payment period as stated by Plugwise, in a manner as stipulated by Plugwise, in the currency invoiced, unless Plugwise has stated otherwise in writing. Plugwise is entitled to invoice at regular intervals.
- 6.2 Objections to the amount of an invoice or complaints have no suspensive effect on the obligation of Buyer to pay. The Buyer who is not entitled to invoke section 6.5.3 (articles 231 until 247 book 6 Dutch Civil Code) is neither entitled to suspend payment of an invoice for other reasons.
- 6.3 If Plugwise does not receive payment within the agreed period, Buyer is in default by operation of law. Buyer shall then owe an interest of 1% per month from that moment onwards, unless the statutory interest is higher, in which case Buyer owes the statutory interest. The interest on the due and payable amount shall be calculated from the moment that Buyer is in default until the moment of payment of the total amount owed.
- 6.4 Advertising does not suspend the buyer's obligations. (see article 11 sub 5)

- 6.5 In the event Buyer fails to pay the full amounts on time as invoiced by Plugwise, extrajudicial (collection) costs (inter alia) shall be payable by Buyer to Plugwise and the following shall apply:
- a) Insofar as Buyer did not act for the purpose of performing a profession or running a business, Plugwise is entitled to an amount equal to the statutorily maximum allowable compensation for the extrajudicial collection costs in this regard, as provided for and calculated in accordance with the Extrajudicial Collection Costs (Fees) Decree, insofar as the amount due - after commencement of the breach - has not been paid after a demand was sent, within 14 days calculated from the day after the day on which Plugwise sent said demand for payment.
 - b) Insofar as Buyer acted while performing a profession or running a business, Plugwise is entitled to compensation for the extrajudicial (collection) costs, which costs in this case, in deviation from Article 6:96, paragraph 4 of the Dutch Civil Code and in deviation from the Extrajudicial Collection Costs (Fees) Decree, in that event are established at an amount at least equal to 15% of the total principal sum due subject to a minimum of EUR 75.00 for each invoice left not paid or not paid in full.
- If, however, Plugwise has incurred higher costs for collection which were reasonably necessary, the costs actually incurred are considered for compensation. Any legal and enforcement costs shall likewise be recovered from Buyer. Buyer likewise owes interest on the collection costs owe.
- 6.6 Buyer is never entitled to set-off of the amount owed by him to Plugwise

Article 7 - Retention of title

- 7.1 All Products delivered under the terms of the Agreement shall remain property of Plugwise until Buyer has fully met all his obligations under the Agreement(s) concluded with Plugwise.
- 7.2 All Products delivered by Plugwise which according to sub 1 of this article are covered by the retention of title, may never be sold nor used as means of payment. The Buyer shall not be entitled to alienate, hand over to third parties, give as (undisclosed) pledge or otherwise encumber Products which are covered by the retention of title during that period.
- 7.3 Buyer shall take any actions reasonably required to protect Plugwise' ownership rights of the Products.
- 7.4 In the event that third parties seizes products subject to the retention of title or want to establish or exercise rights thereupon, Buyer is obliged to inform Plugwise immediately thereof.
- 7.5 If and as long as Plugwise is the owner of the Products, the Buyer shall be obliged to inform Plugwise immediately if third parties enforce rights to the products supplied and also to point out the retention of title to everyone. In addition, the Buyer must exercise due care with the use and/or the storage of the Plugwise System.
- 7.6 In the event of non-payment or untimely payment Plugwise shall be entitled to take back the Products at its own discretion, wherever located, and at the Buyer's expense and risk. The Buyer shall provide the necessary cooperation to do in so far as required.
- 7.7 In case Plugwise intends to exercise its property rights as described within this article, Buyer gives his unconditional and irrevocable consent in advance to Plugwise and to third parties indicated by Plugwise to access all sites where Plugwise' products are located and to take back these products.

Article 8- Intellectual property

- 8.1 All the intellectual property rights to the Plugwise System shall always (continue) to be vested in Plugwise or its licensors. Any intellectual property rights shall not be transferred to the Buyer in any way.

- 8.2 The Buyer shall not imitate the Plugwise System in any way, which also includes the manufacturing of goods by means of reverse engineering or otherwise that indeed differ on one or several points from the Plugwise System supplied by Plugwise, but are based on the Plugwise System.
- 8.3 The Buyer shall not remove or alter any indication regarding the rights of intellectual property on or in the Plugwise System.
- 8.4 To the extent known, the Plugwise System does not infringe any intellectual property rights of third parties. If the Buyer is nevertheless blamed for infringing such a right, Plugwise shall take back the Plugwise system or the relevant part of the Plugwise system against crediting of the amount paid by the Buyer to Plugwise for the Plugwise System (or the relevant part) or ensure that the Buyer can continue to use the products supplied without interference or can use an equivalent other product, this at Plugwise's discretion. The above shall only apply if Buyer (i) immediately informs Plugwise of the claims, (ii) Buyer provides all the relevant information to Plugwise and renders assistance and (iii) Buyer enables Plugwise to correspond/negotiate etc. with the other party.
- 8.5 If Plugwise has supplied a Plugwise System according to designs, drawings or other instructions by or on behalf of the Buyer, the Buyer guarantees that intellectual property rights of third parties are not infringed. The Buyer indemnifies Plugwise for any claims of third parties in this respect.

Article 9 - Licence terms

- 9.1 Plugwise grants the Buyer the non-exclusive and non-transferable right to use the Software. The right of use includes the right to use the Software in the object code. This right of use only applies in combination with the equipment of the Plugwise System and is limited to reading out and managing the equipment of the Plugwise System. In addition to this, the Buyer shall only be entitled to make copies of the software for back-up purposes.
- 9.2 The Buyer shall only use the Software in accordance with the instructions of the supplied user manual. The right of use is limited to the own non-business use. The Buyer shall not be allowed to make modifications, additions or adjustments to the Software. The Buyer shall not be allowed to decompile the Software or to decipher or approach the underlying source code in any other manner, unless and to the extent this is permitted pursuant to mandatory Dutch law.
- 9.3 Plugwise may take technical measures for the protection of the Software. If Plugwise has secured the Software by means of technical protection, the Buyer shall not be allowed to remove, alter or circumvent this security.
- 9.4 The right of use is for an indefinite period, with the exception of a (temporary) functionality that has been purchased through a Feature Key, but shall end by operation of law if the Buyer acts in violation of this article 9 and/or the applicable Licence terms governing the use of Plugwise Software for consumers and small business users. This right of use shall also end in the event of termination of the Agreement.
- 9.5 Plugwise may adjust the Software if Plugwise considers this necessary (i) in connection with adjustments and/or improvements of the Plugwise System, (ii) when errors are discovered or (iii) in the event of altered understanding of the Software. If a point of improvement has become evident to the Buyer, he shall report this to Plugwise. It is up to Plugwise whether or not to adjust the Software. Plugwise cannot be obliged to do so by Buyer in any way. In the event of adjustments, Plugwise may inform the Buyer by e-mail and forward these adjustments. Adjustments to the system, whether or not as a result of evident errors in the Software can in no way result in liability of Plugwise.
- 9.6 The Software contains confidential business information. The Buyer shall observe strict confidentiality in respect of the Software and its operation.

Article 10 - Obligations and liabilities

- 10.1 The Buyer himself is liable for the use, security and correct application of the Plugwise System and for the installation of the Plugwise System, unless the Parties have agreed otherwise. This applies particularly to the Stealth, a product specifically meant to be built-in. Consumers are not permitted to be handling this product independently and the installation of the Stealth should always be executed by a registered installer.
- 10.2 The Buyer shall only utilize the Plugwise System for his own non-business use.
- 10.3 The Buyer shall immediately inspect the Plugwise System for (visible) defects after delivery.
- 10.4 If the Buyer returns the Plugwise System, regardless of the reason, the goods must be provided with a return number. The Buyer will receive this number from Plugwise on request. If the Buyer returns products without stating the return number, this may result in the handling being delayed or products getting lost of the products, in which case it shall be entirely at the Buyer's expense. Costs and risks of returning the Plugwise System or parts thereof, regardless of the reason, shall be at the expense of the Buyer.

Article 11 - Guarantees, investigation and complaints, period of limitation

- 11.1 The products supplied by Plugwise comply with the usual requirements and standards which can reasonably be demanded at the moment of delivery and for which they are intended in the case of normal usage in The Netherlands. The guarantees stated in this article apply to items which are intended for use within The Netherlands. In case of usage outside The Netherlands, Buyer must himself verify whether the use of the Plugwise System and/ or Plugwise products is suitable for use there and meets the conditions for usage outside The Netherlands.
- 11.2 The right of return (right of withdrawal) applies only to consumer purchases made via the Plugwise web shop. Appealing to the right of withdrawal is statutorily bound to a number of rules (see article 13.2). The costs and risk of returning items shall be borne by the Buyer. The right of return is ruled out explicitly for all business purchases.
- 11.3 During a period of twenty-four (24) months after delivery, if the Plugwise System turns out to be faulty, the Plugwise System shall be repaired, replaced by Plugwise free of charge or, to the extent relevant, a missing part shall be delivered. The Buyer must inform Plugwise about the defect to the Plugwise System as soon as possible (see article 11.5).

- 11.4 Every form of guarantee lapses if a defect has arisen as a consequence of or results from injudicious or improper use thereof, incorrect storage, installation or maintenance thereof by Buyer and/or by third parties if, without written permission from Plugwise, Buyer or third parties have made or attempted to make changes to the System. Buyer is likewise not entitled to guarantee if the defect arose through or is the result of circumstances on which Plugwise cannot exert any influence, including weather conditions (such as but not limited to extreme rainfall or temperatures) et cetera.
- Buyer cannot rely on the guarantee if:
- * the Plugwise System is used in another manner or for other purposes than for which it is intended;
 - * if the Buyer performs (or has others) perform work to the Plugwise System without Plugwise's prior approval;
 - * the damages or defect is the result of willful conduct or gross (serious) negligence;
 - * the date on the purchase invoice is no longer readable;
 - * if Buyer has not made every attempt to limit the damage, among other things by shutting down the equipment, making copies and backups of data and the Software.
- 11.5 Buyer is obliged to (order third parties to) investigate the delivered items, immediately when the Products are provided to him or the relevant installation work has been performed. Buyer must furthermore investigate whether quality and/or quantity of the delivered items corresponds with that which was agreed and meets the requirements which parties agreed in this respect. Any visible defects must be reported in writing to Plugwise within seven days of delivery. Any non-visible defects must be reported in writing to Plugwise immediately, but in any case within no more than fourteen days of their discovery. The report must contain a description of the defect in as much detail as possible, so that Plugwise is able to respond effectively. Buyer must give Plugwise the opportunity to investigate (or arrange the investigation of) a complaint.
- 11.6 Claims submitted in time do not exempt Buyer from his obligation to pay. Buyer remains in that case obliged to purchase and pay the other ordered items.
- 11.7 If a defect is reported later, Buyer is no longer entitled to repair, replacement or compensation.
- 11.8 If it is found that the System is defective and a claim to that effect was made in good time, Plugwise shall, at the discretion of Plugwise, replace or ensure remedy or repair of the defective item within a reasonable period after its return. In the case of replacement, Buyer is obliged to return the replaced item to Plugwise and deliver ownership of it to Plugwise, unless Plugwise indicates otherwise.
- 11.9 If it is found that a complaint is unfounded, the costs which have been incurred through this, including (inter alia) the investigation costs, dispatch and installation costs incurred through this by Plugwise, are fully at the expense of Buyer.
- 11.10 If it is established that a complaint is unfounded, costs incurred by Plugwise, including inspection costs incurred by Plugwise, shall be borne in its totality by Buyer.
- 11.11 After the end of the guarantee period, all costs of repair or replacement, including administration, dispatch, installation and call-out costs, are charged to Buyer.
- 11.12 In deviation from the statutory periods of limitation, the period of limitation of all claims and objections against Plugwise and the third parties involved by Plugwise in the performance of a contract is one year.
- 11.13 The data obtained with the assistance of the Plugwise System have an indicative character from which the Buyer cannot derive any rights in connection with their correctness or completeness.

Article 12 - Force majeure

- 12.1 Plugwise is not obliged to fulfil any obligation against Buyer if he is obstructed herein as a result of a circumstance which cannot be attributed to guilt, and nor pursuant to the law, a legal act or current opinion is at his expense.
- 12.2 In these general terms and conditions force majeure means, in addition to that which is understood in this matter by the law and in case law, all causes from outside, foreseen or unforeseen, upon which Plugwise cannot exert any influence, but which cause Plugwise to be unable to fulfil its obligations. This includes work strikes at the company of Plugwise or at that of third parties. Plugwise is also entitled to plead force majeure if the circumstance which obstructs (further) fulfilment of the contract commences after Plugwise should have fulfilled its obligation.
- 12.3 During the period that the force majeure continues, Plugwise may suspend the obligations under the contract. If this period lasts longer than two months, each party is authorized to terminate the contract, without obligation of compensation of damage to the other party.
- 12.4 Insofar as Plugwise at the time of commencement of force majeure has fulfilled its obligations partially under the contract or shall be able to fulfill them, and the part fulfilled or to be fulfilled has independent value, Plugwise is entitled to invoice the part fulfilled or to be fulfilled separately. Buyer is obliged to pay this invoice as if it concerned a separate contract.

Article 13 - Liability

- 13.1 In case Plugwise may be liable, its liability is limited to what is covered in this article.
- 13.2 Plugwise is not liable for damages, of any nature, occurred as a result of inaccurate or incomplete data supplied by Buyer to Plugwise.
- 13.3 Plugwise can only be held liable for direct damages (“direct damages”).
- 13.4 Under direct damages is exclusively understood:
- reasonable costs to determine the cause and scope of the damage, in so far determination concerns damage within the meaning of this article and these general terms;
 - reasonable costs made as a result of repairing the faulty performance of Plugwise in order to comply with the Agreement, in so far the faulty performance can be attributed to Plugwise;
 - reasonable costs made, in order to prevent or limit damage, in so far Buyer can demonstrate that these costs have resulted to a limitation of the direct damage, within the meaning of this article and these general terms.
- 13.5 Plugwise is can never be held liable for indirect damages (“indirect damages”), including consequential loss, loss of profits, lost savings and loss due to interruption of operations or company stagnation, of any nature whatsoever. In case of a Consumer Purchase, the scope of this provision is limited to that permitted under article 7:24 (2) of the Dutch Civil Code.
- 13.6 In case Plugwise can be held liable for any damages, Plugwise’ liability is limited to the maximum of twice the value of the invoice or order, and at least limited to the part of the order to which the liability pertains.
- 13.7 Plugwise’ liability remains any case limited to the sum received from its insurance company where appropriate.
- 13.8 The limitations on liability summed up in this article, shall not apply in case damages arises directly from willful acts of gross negligence on the part of Plugwise, its subordinates and non-subordinates.

Article 14 - Suspension and dissolution

- 14.1 If the Buyer fails in the performance of the Agreement, regardless whether this failure is attributable to the Buyer, Plugwise shall be entitled, at its discretion, to suspend or (extra judicially) dissolve the Agreement (partly) without becoming liable to pay compensation as a result. This also applies in the event of a suspension (or application for suspension) of payments or bankruptcy of the Buyer. In the above-mentioned cases, the Buyer shall be in default without notice of default being required.
- 14.2 If the Buyer is a consumer and an inhabitant of the EU, he may dissolve an Agreement entered into by purchasing the Plugwise System in the Plugwise-webshop, within fourteen (14) days after receipt of the purchased goods without stating reasons. For all other consumers this period is limited to seven (7) days. If the Buyer dissolves the Agreement, he shall return the Plugwise System to Plugwise and Plugwise shall refund the purchase price within fourteen (14), respectively thirty (30) days. The costs of the return shipment shall be at the expense of the Buyer. The Buyer must return the Plugwise System with the original purchase invoice, unused and in the original state and packing. Used parts of the Plugwise System and damaged or incomplete return shipments shall not be accepted by Plugwise. 'Use' also applies if the Software has been activated.

Article 15 - Data processing

- 15.1 Plugwise is responsible for the processing of personal data within the framework of the Agreement and the use of the Plugwise System within the meaning of the Personal Data Protection Act. Plugwise will process the personal data in accordance with its Privacy & Cookie Policy. This Privacy & Cookie Policy may be consulted on Plugwise's website (www.plugwise.com) or may be requested from Plugwise free of charge.

Article 16 - Continuing effect

- 16.1 All rights and obligations that are intended to continue after the end of the Agreement shall remain in effect after termination of this Agreement. This applies in any case to articles 8, 9 and 18.

Article 17 - Void provisions

- 17.1 If a provision of these general conditions would be declared invalid or not applicable for whatever reasons, the other provisions shall remain in full force.

Article 18 - Choice of law and choice of forum

- 18.1 Dutch law shall govern the legal relationship between the Parties.
- 18.2 Any disputes between the Parties relating to an Agreement shall be submitted to the District Court of The Hague.