General conditions of sale and delivery Plugwise B.V. –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 the Buyer and Plugwise, and also the related legal relationships between Plugwise and the Buyer.

Parties: Plugwise and the Buyer.

Plugwise: the private limited company with its registered office in Oegstgeest, acting under the name of Plugwise B.V., registered with the Chamber of Commerce under number 28.11.32.18.

Plugwise System: the system to measure the energy consumption supplied by Plugwise, including the Software, all the peripheral equipment, extensions to the Plugwise System and the supplied documents.

Software: the computer program "Source" and the apps (pc or mobile device) 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 of Plugwise and orders to Plugwise, and also 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 concluded.

Article 3- Agreement

3.1 All offers of Plugwise and orders to 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 shall at all times be entitled to refuse an order, entirely or partly, and without giving reasons, without being liable to pay compensation in any way as a result.

3.3 After receipt of an order from the Buyer, in whatever form, Plugwise confirms the order to the Buyer in writing and the Agreement shall become effective. The invoice or the confirmation by e-mail shall also explicitly apply as a written confirmation. The Agreement shall also be effected when Plugwise performs the delivery of the Plugwise System.

3.4 Plugwise reserves the right to have the Agreement or parts thereof performed by third parties

Article 4- Prices and Price Increases

4.1 All prices are in Euros and 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 the Plugwise System 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 do not constitute a deadline, unless the Parties explicitly agree otherwise in writing. If the delivery periods are exceeded, Plugwise will consequently not be in default and therefore this cannot result in liability to pay compensation on the part of Plugwise. Neither can the Agreement be dissolved as a result.
5.4 Plugwise shall at all times be entitled to deliver an order in parts.
5.5 Plugwise reserves the right to modify the products to be delivered at all times or to stop their delivery. Through the exercise of this right, Plugwise shall under no circumstance be liable to pay compensation.
5.6 The risk of the Plugwise system to be supplied by Plugwise to the Buyer shall pass to the Buyer at the time of the delivery of the Plugwise System to the Buyer. The transfer of risk shall also be effected if the Plugwise System is offered for delivery, but for whatever reason is not taken by the Buyer

Article 6- Payment
6.1 Payment must be effected prior to the delivery by means of the payment method(s) indicated by Plugwise on Plugwise's website, unless otherwise agreed in writing.
6.2 If the Parties agree otherwise and the payment has not been received by Plugwise within the agreed period, the Buyer shall be in default by operation of law and owe statutory interest with effect from that time. Claims do not suspend Buyer's obligations to pay.

Article 7- Retention of title
7.1 The Plugwise System remains the property of Plugwise until the time that the Buyer has fully met his payment obligation.
7.2 If the ownership of the Plugwise System has not yet been passed, the Buyer will nevertheless be allowed to use the Plugwise System. The Buyer shall not be entitled to alienate, hand over to third parties, give as (undisclosed) pledge or otherwise encumber the Plugwise System during that period.
7.3 In the event of non-payment or untimely payment Plugwise shall be entitled to take back the Plugwise System at its own discretion, wherever located, and at the Buyer's expense and risk. The Buyer must provide assistance with this.
7.4 As long as Plugwise is the owner of the Plugwise system, 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.

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

the Buyer (i) immediately informs Plugwise of the claims, (ii) the Buyer provides all the relevant information to Plugwise and renders assistance and (iii) Plugwise itself is enabled 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 the reading out and controlling of 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, but shall end by operation of law if the Buyer acts in violation of this article 9. 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 the 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- Guarantee

11.1 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.

11.2 The 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 negligence;
* the date on the purchase invoice is no longer legible;

11.3 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- Liability

12.1 Plugwise shall not be liable for any direct and indirect damage including damage as a result of the (temporary) non-functioning of the Plugwise System and damage suffered by third parties, unless it is question of wilfulness or deliberate recklessness.

12.2 Any liability of Plugwise shall be limited to the total amount (without forwarding expenses) of the original purchase of the Plugwise System in accordance with the original invoice to a maximum of EUR 5,000.

12.3 In the event that the Plugwise System does not comply with the Agreement, the claims of the Buyer shall lapse on the expiry of a period of two (2) years after its announcement at the latest two (2) months after the defect was discovered. Any other claim of the Buyer on Plugwise, pursuant to whatever reason, shall lapse or expire after one (1) calendar year following the occurrence of the damage.

Article 13- Suspension and dissolution

13.1 If the Buyers 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.

13.2. If the Buyer is a consumer ánd 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 14- Data processing

14.1 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 15- Continuing effect

15.1 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 at any rate to articles 8, 9 and 17.

Article 16- Void provisions

16.1 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 17- Choice of law and choice of forum

17.1 Dutch law shall govern the legal relationship between the Parties.

17.2 Any disputes between the Parties relating to an Agreement shall be submitted to the District Court of The Hague.