

Caressi B.V. General Terms and Conditions of Sale and Delivery

Weteringstraat 8
NL-7041 GW 'S-
Heerenberg
As of 1 May 2018

Article 1: Definitions and applicability

1. In these general terms and conditions the following definitions apply:

a) Customer: any customer, including wholesaler, processor and/or retailer not being a consumer, that enters into an Agreement with Caressi B.V.;

b) General Terms and Conditions: these general terms and conditions of sale and delivery, and payment conditions;

c) Caressi: Caressi B.V.

d) Agreement: the entirety of agreements between Caressi and Customer concerning the sale and delivery of sinks, taps and accessories, in the broadest sense.

2. These General Terms and Conditions form part of and apply to all Agreements between Caressi and Customer, and to all legal and other acts and non-contractual obligations of Caressi with, for or in dealings with Customer in the formation and/or performance thereof.

3. Stipulations of Customer that deviate from these General Terms and Conditions are only applicable if they have been accepted expressly and in writing by Caressi. Caressi expressly dismisses the applicability of (general) terms and conditions used by Customer.

4. In the event of a conflict between a provision in an Agreement and a provision in these General Terms and Conditions, the provision in the Agreement shall prevail.

5. Caressi is authorised to amend these General Terms and Conditions unilaterally. The amendments take effect after they have been made known to Customer and in any case one (1) month after the amended General Terms and Conditions have been placed on the website of Caressi (www.caressi.nl).

6. Caressi is authorised to make use of third parties in the performance of an Agreement, the costs of which shall be passed on to Customer in accordance with the quotation supplied.

Article 2: Formation of Agreements

1. The offers of Caressi are always free of obligation in the sense that they must be regarded as an invitation to make an order. The Agreement is formed if the order, based on the offer, that is made by Customer is accepted by Caressi by means of a confirmation of sale in whatever form.

2. The prices as stated in the catalogues, price lists or other brochures published by Caressi are for information purposes and are not binding for Caressi; Customer cannot derive any rights from them. The above prices can always be changed by Caressi. Customer owes, with due

observance of the relevant provisions of article 13, the price that Caressi has entered in its confirmation of order or invoice to Customer.

3. Any additional agreements or changes that are made later, as well as verbal agreements and/or undertakings made by or on behalf of Caressi, are only binding for Caressi if they have been confirmed in writing.

4. All costs that arise from changes desired by Customer and accepted by Caressi to an Agreement that was entered into and confirmed earlier are at the expense of Customer.

5. If an Agreement is entered into with more than one Customer, all obligations under the Agreement and these General Terms and Conditions lie jointly and severally with each of the Customers.

Article 3: Guarantees

1. If a defect arises within the agreed guarantee period,

Caressi shall, if the claim has been made in time and in conformity with the provisions of article 4 and article 5 and Caressi accepts the claim, arrange for repair or redelivery within a period that following consultation with Caressi is reasonably set by Customer. If Caressi does not accept the claim, Customer may lodge an appeal with the *Stichting Geschillencommissies Keukenwerkbladen* (Disputes Committee Foundation for Kitchen Worktops) in The Hague in accordance with the provisions of article 4.

2. If Caressi cannot satisfy the provisions of the previous paragraph, for example because the product is no longer in its product range or at least no longer in the same form or quality, Caressi shall, after consultation with Customer, supply a product of equal value, or Caressi shall reimburse Customer the purchase price of the product in which the defect manifested itself.

3. If Caressi has already performed on the basis of this article, the guarantee remains in effect for the remaining guarantee period of the original product with respect to the repaired product or product supplied as replacement.

4. Minor deviations in colour and/or structure (whereby samples always only give a global impression of the goods to be supplied) that are deemed acceptable or unavoidable in the trade do not constitute a shortcoming on the part of Caressi. Defects that are the result of normal wear and tear and/or improper use and/or improper installation or building-in likewise do not constitute a shortcoming on the part of Caressi.

5. Customer can only make a claim under the guarantee or hold Caressi liable in other respects if Customer has fulfilled all its obligations, more particularly its payment obligations and the conditions as referred to in the following article.

Article 4: Complaint

1. Bearing in mind the guarantee to be provided by Caressi and in order to prevent unnecessary damage for one of the parties involved in the case of a defect covered by the guarantee, Customer is obliged to thoroughly inspect or have inspected the product supplied by Caressi for any defects as soon as possible after the delivery, but in any case before onward supply to third parties or processing. Any visible defects must be reported in writing to Caressi within two (2) calendar days of the delivery, provided with an overview of the complaint that is as complete as possible with

photo or video, including the name, address, telephone number and email address of the end customer to service@caressi.nl. Only those defects that could not in all reasonableness have been observed by Customer within the above period, but are observed within one (1) month of the delivery, must be reported in writing to Caressi within the last-mentioned period. If this does not happen, Customer is deemed to have accepted the delivered products in conformity. The above report must contain a description of the defect that is as detailed as possible, so that Caressi is able to respond satisfactorily. Customer must give Caressi the opportunity to investigate a complaint or have the complaint investigated.

2. Customer is obliged or guarantees to Caressi that in the processing or installation of the product, work is done in a professional manner and materials are used that allow the product, if necessary with a view to compliance with the guarantee, to be removed or moved easily.

Article 5: Disputes

1. If a defect arises that in the view of Customer is attributable to Caressi as referred to in article 3, paragraph 2, Customer must, at the risk of forfeiting rights, report this to Caressi within the periods stated in article 4.1 in the way specified in that article.

2. If Caressi accepts the complaint as referred to in the previous paragraph, it shall arrange, in accordance with article 3, paragraph 2, for repair or redelivery or delivery of the missing item.

Article 6: Delivery

1. Customer is obliged to receive the product as soon as it is offered to it for delivery.

2. A consignment note, delivery note or similar document provided upon the delivery is deemed to correctly show the quantity of the delivered goods, unless Customer reports its objection to this to Caressi immediately after receipt of the goods.

3. Even if Customer has notified Caressi on time that it has received fewer goods than stated on the document referred to in the second paragraph of this article, this does not give Customer the right to suspension of payment of the quantity actually delivered.

4. Unless agreed otherwise, the costs of transport are payable by Customer and the transport of the goods is at its risk. The delivery then takes place at the time that the goods have been loaded on the means of transport. However, if delivery free warehouse of Customer has been agreed, the transport of the product is at the risk and expense of Caressi. In the event of delivery free warehouse of Customer, Caressi is under no obligation to transport the goods beyond the point that the vehicle may reach over land that is (or has been made) properly accessible and safe. Delivery shall always take place next to the vehicle, at which place Customer shall be obliged to receive the goods. Customer must contribute reasonably, including by making assistants available, to ensuring that Caressi can fulfil its obligations for unloading goods easily. If Customer remains in default in the matter, the costs caused by this are payable by it.

5. Damage that arises as a result of the use of a hoist, lift, forklift truck, crane or any other equipment is at the risk and expense of the party that is responsible for that use.

6. A transport insurance is only taken out by Caressi at the express request of Customer; all related costs shall be payable by Customer.

Article 7: Delivery date; Delivery on a call-off basis

1. The expected delivery date is stated by Caressi as precisely as possible. Caressi is obliged to make every effort to perform within this expected period. The delivery date is always deemed to be stated or agreed approximately, unless a strict deadline has been agreed.

2. Customer is not entitled to any compensation in whatever form in the event Caressi exceeds the stated delivery date, unless such has been explicitly agreed or if the exceeding is directly and immediately caused by wilful negligence of Caressi.

4. If the delivery date is exceeded, Customer cannot cancel the Agreement or refuse to receive the goods and/or to pay for them. Customer is entitled, after the delivery date has expired, to demand in writing that Caressi deliver within three (3) weeks of the date of demand, under threat of cancellation. In that case, Customer has no right to any compensation.

5. In the event delivery on a call-off basis has been agreed without periods for the call-off having been set, Caressi is authorised, if after the date of confirmation and before the delivery one or more cost factors have undergone a change, to adjust the agreed price accordingly. Customer is authorised, unless reasonableness prevents this, to terminate the Agreement on the basis of that price change. If within three (3) months of the Agreement not all goods have been called off, Caressi is authorised to demand Customer name a period within which everything shall be called for, whereby Customer is also obliged to purchase. Caressi is in that case authorised, in accordance with article 9, paragraph 1 of these General Terms and Conditions, to charge storage costs to Customer.

Article 8: Packaging

1. The packaging (packages, pallets and suchlike) used for the delivery and that is usable more than once is charged by Caressi to Customer.

Returned packaging as referred to in the previous paragraph is credited after receipt by Caressi. Customer must send this packaging carriage paid. Packaging that is in poor condition, at the discretion of

Caressi, shall not be credited.

Article 9: Deferment of delivery; non-purchase and cancellation

1. If Customer requests deferment of delivery for a product that is ready for it, and Caressi agrees to this, the risk of the goods is transferred at the moment of the original delivery date and Caressi is entitled to invoice the agreed price and after a storage period of four (4) weeks charge storage costs.

2. If Customer does not accept delivery of the product or not on the agreed date, or it cancels an order,

Caressi has the right to terminate the Agreement and charge compensation. If this concerns customised work, this compensation shall consist at least of the costs incurred in connection with the futile delivery, plus the full purchase price. If customised work is not involved, the compensation

shall at least consist of the costs of the futile delivery, and the full purchase price reduced by 50% of the price for which the product is sold or could reasonably have been sold within sixty (60) days of the original delivery date by Caressi to a third party.

3. Caressi is authorised to suspend the delivery of products bought by Customer if Customer for its part does not fulfil its obligations (including the obligation to pay for earlier deliveries) or Caressi has good reasons to fear that Customer shall not fulfil its obligations. Caressi shall inform Customer as soon as possible of a suspension of a delivery and the reasons for that. Customer is in that case obliged immediately upon request of Caressi – at the discretion of Caressi – to pay all outstanding debts, settle the purchased products through prepayment, make a deposit and/or provide security. Caressi is not liable for damage of whatever nature of Customer that is the result of a suspension of the delivery, unless it is a matter of gross negligence of Caressi.

Article 10: Termination

Without prejudice to its other rights pursuant to the law, the Agreement and these General Terms and Conditions, Caressi is authorised to terminate the Agreement with immediate effect, without judicial intervention, in whole or in part, or to suspend its performance, such without prejudice to its other rights (to performance and/or compensation), if:

- Customer acts contrary to any provision of the Agreement and/or these General Terms and Conditions;

- a (foreign) legal regulation is applied, the aim of which is to wind up Customer or restructure the debt position of Customer, such as liquidation, (provisional) moratorium and similar legal regulations;

- the company of Customer is shut down or wound up or a private settlement is offered by Customer to creditors;

- Customer, following written request for such, has not provided sufficient security in the opinion of Caressi within seven days;

In these cases, every claim against Customer is immediately due and payable, without Caressi being obliged to pay compensation or bound by any other obligation. Without prejudice to the right of Caressi to claim damage actually suffered from Customer, the minimum compensation that Customer is in this case liable to pay is determined in accordance with article 9 paragraph 2 of these General Terms and Conditions.

Article 11: Retention of title

1. The products supplied by Caressi remain the property of Caressi until the purchase price of those products, previously supplied products or products yet to be supplied has been paid by Customer, and Customer has also paid that which is owed with respect to activities or costs in connection with the supply thereof.

2. The ownership of those products also remains with

Caressi as long as Customer has not paid a claim of Caressi due to breach of contract by Customer in connection with those products/activities.

3. Without prior written express permission from Caressi, Customer may not, before the ownership thereof has passed to Customer, sell, resell or dispose of the products other than in the normal

exercise of its business, nor encumber or burden the products in any other way. Without written permission from Caressi, Customer is also not permitted, before the ownership thereof has passed to Customer, to process the products, assemble or disassemble or make the products part of another movable or immovable property other than in the normal exercise of its business.

4. If third parties seize the products supplied that are subject to retention of title or want to establish or lay claim to a right to them, Customer is obliged to inform Caressi of this immediately as well as inform those third parties of the retention of title of Caressi.

5. In the event Customer does not fulfil its obligations and Caressi desires to effect its right to ownership, Caressi is entitled to unobstructed access to the products and to the place where the products are located, and Customer commits in that event to cooperate fully with Caressi in order to enable Caressi to exercise its retention of title by taking back the supplied products.

6. If a product supplied by Caressi of which Caressi has the retention of title is imported in another member state of the European Union, the law of that member state shall govern the retention of title if the relevant provisions of those laws is more favourable for Caressi.

Article 12: Force majeure

1. Force majeure shall be, in addition to the circumstances accepted as such by law, also and in any event strike and/or sickness of the employees or agents of Caressi, non-delivery, incomplete and/or delayed delivery or other attributable shortcomings or wrongful conduct by suppliers of Caressi, war and danger of war, whole or partial mobilisation, import or export bans, measures imposed by Dutch and/or foreign government organisations that make the performance of the Agreement more difficult and/or more costly than could be foreseen when an Agreement was entered into, natural forces (including earthquakes, water damage and frost), traffic congestion, loss or damage during transport, fire, theft, interruptions to deliveries of energy, faulty machinery, all this either within Caressi's company or at third parties from which Caressi procures all or some of the necessary materials or raw materials and furthermore all other causes that arise outside the will and/or control of Caressi. In the event of temporary force majeure, the delivery time can be extended by the duration of the force majeure, plus a period during which Caressi can reasonably proceed to delivery, in which case Customer is not entitled to terminate the Agreement. Customer does have the right, after the delivery time has passed, to demand in writing that Caressi deliver within four (4) weeks of the date of demand, failing which Customer can immediately terminate the Agreement. In that case, Customer has no right to any compensation.

Article 13: Price, payment and consequences of late payment

1. The prices stated by Caressi in its offer or laid down in the Agreement are, unless otherwise stated, exclusive of VAT and exclusive of transport costs.

2. All customs formalities, both in the country of export and in the country of import, must be handled by Customer. All costs and levies related

to customs formalities are payable by Customer. If, at the request of Customer, Caressi takes care of the customs formalities or if the agreed conditions of the ICC Incoterms impose this responsibility on Caressi, these customs formalities and the related costs and levies are at the risk and expense of Customer.

3. Caressi can, after concluding the Agreement, raise the prices on the basis of external factors such as increased taxes, external supplier prices, exchange rates, raw materials, freight costs, wages and/or national insurances, import duties, levies or other charges.

4. Payment of the final amount of the invoice of Caressi must – decreased by any late payment surcharge that has been charged – be made within thirty (30) days of the invoice date, unless expressly agreed otherwise between Caressi and Customer. The date of payment is the date on which the amount owed by Customer is credited to the bank or giro account specified by Caressi.

5. The right to suspension or settlement of any payment obligation can never be invoked by Customer against Caressi.

6. If Customer exceeds the term of payment as referred to in paragraph 4 of this article, Customer is in default towards Caressi without a warning or notice of default being required and Customer owes the statutory commercial interest plus 5% per year on the final amount of the invoice from the expiry date to the date on which payment is made. Caressi has the right each time after a year has passed to increase the amount on which the statutory commercial interest is calculated by the interest owed in the course of that year. Payment in discharge of the obligation can only be made to the bank or giro account specified by Caressi.

7. In the event Customer is in default of the payment, Customer also owes the extrajudicial and judicial costs. The extrajudicial costs are charged on the basis of the costs actually incurred with a minimum of 10% of the amount not paid or not paid on time.

Article 14: Liability

1. Neither Caressi nor its staff or any third parties hired by

Caressi shall be liable for any damage on whatever grounds and of whatever nature suffered by Customer or any third party, in relation to the delivery of products, the use of products, the possession of products or defects to delivered products, including improper performance of the obligation of repair or redelivery, barring wilful intent or deliberate recklessness on the part of Caressi or if and insofar as mandatorily determined otherwise.

2. If and insofar as any liability on the part of Caressi existed pursuant to the first paragraph of this article, Caressi is only liable for direct damage. The indirect damage suffered by Customer, including consequential damage consisting of (but not limited to) loss of profit, loss of turnover or loss of income, shall never qualify for compensation by Caressi.

3. Liability for direct damage of

Caressi remains in any case limited to the obligation to redelivery or the obligation to pay the invoice amount related to the

Agreement, with a maximum of the amount that the professional indemnity insurance of Caressi pays out in such cases (plus the amount of the excess), all this at the discretion of Caressi.

4. Customer indemnifies Caressi against all claims by third parties that suffer damage in connection with the performance of the Agreement and of which the cause may be attributed to a party other than Caressi, and against claims by third parties related to the agreements entered into between Customer and those third parties.

5. Customer is not permitted to resell the products or make them available in any way to third parties in countries outside the European Union, to third parties in countries that do not come under the applicability of the CE marking and/or to third parties in countries in which different or additional requirements apply to the product, safety and the environment. If Customer acts in conflict with the provisions of the previous sentence, Caressi is in no way responsible or liable for this. Customer indemnifies Caressi against all damage and claims by third parties (including fines, sanctions and consequential damage) as a result of the resale or redelivery of the products in contravention of the provisions of this paragraph.

6. Without prejudice to the provisions of articles 4 and 5 concerning claims and the provisions of this article concerning liability of Caressi, the limitation period or expiry period of all claims and defences against Caressi and the third parties involved with Caressi in the performance of the Agreement is one (1) year, or a shorter period if that is provided for by the law.

Article 15 Return conditions

Goods can only be returned with written permission from Caressi. Client-specific goods (customised goods) are not taken back by Caressi. The returned goods may not be older than three (3) months and must be marketable, not client-specific and undamaged. The goods must also be unused and packed in their original packaging; the packaging must not be marked. If these conditions are fulfilled, in principle a full credit note shall be issued; if not, costs are charged or the full amount is not credited.

Article 16: Applicable law and competent court

1. All agreements entered into by Caressi shall be governed by Dutch law to the exclusion, where necessary, of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

2. If a provision of these terms and conditions is deemed invalid, unlawful or non-enforcing, the terms and conditions shall continue to apply. Parties shall mutually modify those provisions that do not stand up in court so that the meaning of the provision is equalled, in order to reflect the original intention of parties. Such a provision shall not affect the lawfulness or validity of the other provisions.

3. All disputes that arise between Caressi and Customer shall, without prejudice to the provisions of article 5 and without prejudice to the legal competence of the Subdistrict court, be resolved by the Competent Court in the town of the registered office of Caressi.

