

General Terms & Conditions

General Terms & Conditions of Factory Spotter B.V. (hereafter also referred to as "Factory Spotter"), as filed at the Chamber of Commerce in Amsterdam.

Article 1. Definitions	2
Article 2. General	3
Article 3. Establishment of the agreement.....	3
Article 4. Payment.....	5
Article 5. Liability	6
Article 6. Personnel, auxiliary persons	7
Article 7. Indemnification	7
Article 8. Licenses/obstacles/restrictions/force majeure.....	7
Article 9. Expiry, prescription	8
Article 10. Latest version	8
Article 11. Applicable law, jurisdiction	8

RECITAL

Factory Spotter is a digital platform who provides its customers with services in the field of sourcing by delivering information about suppliers through digitized dashboards. Factory Spotter takes full commitment when requested by the customer to provide information about supplier(s). However, in no way Factory Spotter has or will ever take the undertaking, by any reason, to perform the sourcing process itself.

Article 1. Definitions

In these Conditions, the following terms shall have the following meanings:

1. **Agreement:** the agreement concluded between Factory Spotter and the Client with respect to the Services to be performed by Factory Spotter, of which these Conditions form part.
2. **Client/Principal/Counterparty:** every person, either natural or legal, who provides Factory Spotter with an order to perform Services as defined in these Conditions, irrespective of the agreed method of payment.
3. **Force Majeure:** any circumstances in which the counterparty can no longer demand a performance of the agreement by Factory Spotter, amongst others because of war, danger of war, flooding, strikes, riots, shortage of staff, fire, governmental measures, prohibition of import and export, the change of the political structures of countries, sudden enforcement of emergency legislation and/or change of legislation and operating troubles of enterprises.
4. **Services:** any activity or work of providing information performed by Factory Spotter for the benefit of the Client or Principal, as agreed between the two parties in the agreement.
5. **Special Drawing Rights (SDR):** an internationally fixed exchange rate system/unit of account created, regulated and determined periodically by the International Monetary Fund (at the time these general conditions were designed, 1 SDR amounted for 1.24 EUR; future values determined under these conditions will be calculated in accordance with the rate established by the International Monetary Fund).
6. **Third Party/parties:** all those persons who are not Factory Spotter's employees with whom Factory Spotter's has an undertaking on behalf of the Client for the purpose of executing the Agreement, regardless Factory Spotter's having an undertaking in its own name or on the name of the Client.
7. **Supplier:** Any entity, legal or natural, active in the field production, distribution and or trade of physical goods.

Article 2. General

1. These General Terms & Conditions apply to all transactions, instructions, services, work and agreements (hereafter “Agreements”) of the private company with limited liability Factory Spotter B.V. (hereafter “Factory Spotter”) entered into with or performed for the benefit of a contractual counterparty, hereafter ‘the Principal’, ‘the Client’ or ‘the Counterparty’.
2. These General Terms & Conditions are deemed to form part of all Agreements concluded by Factory Spotter. All Agreements, of whatever nature, entered into by Factory Spotter, will be accepted and executed subject exclusively to these General Terms & Conditions.
3. Orders, confirmations and/or acceptance by the Principal of quotations and offers made by Factory Spotter shall constitute express recognition and acceptance of these General Terms & Conditions and any applicable Specific Conditions, all simultaneously replacing and expressly dismissing any general, purchase or special terms or conditions of the Principal.
4. Departures from these General Terms & Conditions and in particular, general, purchase or special conditions of the Principal will only apply to Agreements with Factory Spotter if this has been expressly agreed in writing with the Board of Management of Factory Spotter.
5. Other terms or conditions mentioned in any documents issued by or on behalf of Factory Spotter shall only apply with due regard for the provisions of these General Terms & Conditions.
6. Factory Spotter is entitled and, now for then, is duly authorized by the Principal, to complete work, instructions, transactions and agreements which Factory Spotter, acting as an intermediary for the Principal, assigns to third parties to execute, or to that effect use property or resources of third parties, subject to the industry-standard terms and conditions or the terms and conditions laid down by that third party or those third parties for their business, whereby these General Terms & Conditions shall remain in full force vis-à-vis the Principal.
7. Should one or more provisions of these conditions be null and void or be found to be voidable, this shall not affect the legal force of other provisions of the General Terms & Conditions which shall remain in force.

Article 3. Establishment of the agreement

1. The prices quoted by Factory Spotter are in EURO or USD, and are exclusive of VAT or other government-imposed levies.
2. Offers made by Factory Spotter may be conveyed to the (potential) Counterparty by various media, including: E-mail, Factory Spotter Application or Telephone.
3. Unless otherwise agreed in writing, all offers made by Factory Spotter are without obligation, particularly as regards the period of performance and prices. Summary departures may not, under any circumstances, constitute grounds for the Counterparty to cancel or dissolve the agreement.
4. All prices quoted for services and/or work by Factory Spotter are based on the prices in force at the time of the quote. Should these prices change afterwards, Factory Spotter reserves the right to subsequently alter the prices, subject to reasonableness and fairness. If the original price is increased by more than twenty percent, the Counterparty shall have the right to dissolve the agreement. In that case, the agreement must be dissolved in writing, within five working days after Factory Spotter has notified the Counterparty of the price increase.
5. Acceptance by the Counterparty of the offer made by Factory Spotter may take the form of a written, verbal and/or electronic confirmation of the offer by the Counterparty, or other affirmative response to the offer made by Factory Spotter.
6. The Agreement shall be deemed concluded when Factory Spotter has received the Counterparty's acceptance, in accordance with paragraph 5 of this article.
7. Upon receipt by Factory Spotter of the order placed by the Counterparty, Factory Spotter may demand from the Counterparty an amount equal to the quoted price, by way of advance payment which the Counterparty shall accept.
8. Each Agreement concerning the rendering of services by Factory Spotter shall be established with Factory Spotter. This shall also apply if it is the Counterparty's express or tacit intention that the instruction will be carried out by a particular person. The operation of article 7:404 BW (Dutch Civil Code), which makes provision for the latter event, and the operation of article 7:407(2) BW, which stipulates joint and several liability for the event where two or more persons have been given an instruction, is hereby expressly excluded.

Article 4. Payment

1. The Counterparty shall pay the price for the services and/or work supplied by Factory Spotter in the manner indicated in the invoice received from Factory Spotter.
2. In the event that, for the rendering of services, the Counterparty is promised an invoice with a term for payment, the Counterparty shall be obliged to pay the amount due within the term for payment allowed. Payment shall be made to a bank account to be designated by Factory Spotter.
3. If, in the event of non-timely payment as referred to in this article, Factory Spotter seeks to collect its claim independently or through the services of third parties, the Counterparty shall be obliged to pay in full all the extrajudicial collection costs incurred. For debts of up to and including EUR 5.000, these extrajudicial collection costs shall total fifteen percent of the amount to be collected, and above that threshold shall depend on the degressive invoice rate charged by lawyers, but in any event shall be a minimum of EUR 350. In addition, from the moment the debt falls due, Factory Spotter shall charge the Counterparty interest of 1% per month or – if applicable and greater – the statutory commercial interest determined by Dutch law.
4. If the Counterparty defaults on payment to Factory Spotter, Factory Spotter shall have the right to suspend further performance of all current Agreements between the parties until such time as the payment has been made. If previously agreed otherwise, cash and/or advance payment may be required for the further execution of an order.
5. If, either prior to or during the performance of an Agreement, Factory Spotter receives clear indications of the Counterparty's inadequate or diminished creditworthiness, Factory Spotter shall have the right to not further perform the services agreed upon unless, at its demand and to its satisfaction, the Counterparty effects advance payment of the amount due or, security has been furnished for the proper payment of the price due, regardless of whether this would be in cash or whether any other period has been set for the performance of the Agreement.

In the latter case, Factory Spotter may, on pain of the price for the portion of the Agreement(s) already performed being immediately due and payable and the cessation of any further performance of the Agreement(s), also demand the provision of security for the period between such performance and payment.

6. The Counterparty shall be bound vis-à-vis Factory Spotter to furnish security as referred to in the preceding paragraph for any amount owed to Factory Spotter, at that time or in future, even if Factory Spotter has not suspended or ceased its performances. The costs of, for example, legal assistance, service of documents and other similar expenses incurred by Factory Spotter shall in this case always be borne by the Counterparty.
7. Payments made by the Counterparty shall always be used first to reduce all costs, then to reduce all interest due and finally, to reduce the oldest outstanding invoices – even if the Counterparty states that the payment relates to a later invoice – and all accruing interest.
8. All payments must be made without discount, set-off or other deductions.

9. Invoices, reminders and demands sent to the Counterparty by Factory Spotter shall be deemed to have been received by the Counterparty and kept without protest if the Counterparty does not make a complaint to Factory Spotter regarding the invoice, reminder or demand in question within five working days of the invoice date, by registered letter. The Counterparty itself is obliged to inform Factory Spotter about any changes of address. Until such moment as a change of address is notified, Factory Spotter shall be entitled to use the address included in the Agreement.

Article 5. Liability

1. All Agreements are performed at the expense and risk of the Principal. Under no circumstances shall Factory Spotter ever be liable for any damage suffered by the Principal/Counterparty and/or third parties, except in the case of fault or negligence on the part of Factory Spotter in the performance of the Agreement. Any liability for consequential loss suffered by the Principal and/or third parties is excluded by Factory Spotter.
2. If and in so far as Factory Spotter's and/or its personnel and/or Board of Management were to be liable for any damage pursuant to paragraph 1 of this article or otherwise, any residual liability – including if the applicable Specific Conditions contain a higher maximum amount – shall at all times be limited to no more than the invoice amount for the instruction pursuant to the Agreement, which, at all times and in all cases, is limited to 480 SDR per instruction and – in the event of several related instructions – this liability shall be limited at all times to a maximum of 1440 SDR, this amount being distributed pro rata part among the injured parties, as the maximum compensation payable.
3. Any persons entering land, production sites, warehouses vessels or vehicles used by third parties or locations for which Factory Spotter has provided information shall, with everything upon their person, do so at their own expense and risk and must take personal responsibility for compliance with the legal, contractual or current security provisions in force at those locations. Any liability for material and immaterial (consequential) damage occurring at such locations is excluded.

Any liability for physical injury is excluded, unless any provision of law forbids such exoneration. In that case, any liability for such physical injury shall be subject to the upper limits set by Factory Spotter in accordance with paragraphs 1 and 2 of this article.

4. Any liability on the part of Factory Spotter, its Board of Management and/or employees or persons or companies whose services are called upon by Factory Spotter shall lapse if Factory Spotter has not been made aware of the alleged attributable failing and/or potentially unlawful act, in writing, before the work is completed or before leaving the land or location at which the work has been or should be carried out or any performance and/or service should be rendered. If, in the circumstances, this is not reasonably possible for the Principal, any liability on the part of Factory Spotter shall lapse if written notice of liability is not sent to Factory Spotter and/or the company or person engaged by the latter within eight (8) days of cognizance of the alleged infringement.

Article 6. Personnel, auxiliary persons

1. In the performance of the Agreement with the Counterparty, Factory Spotter shall have the right to use Factory Spotter's own personnel and resources or the personnel and/or resources of third parties engaged by Factory Spotter, at its entire discretion.
2. Factory Spotter also stipulates, including for the benefit of personnel and/or companies and/or their personnel and/or other auxiliary persons and their personnel engaged by or via Factory Spotter, any exclusion and/or limitation of liability and/or prescription and/or forfeiture in conformity with these General Terms & Conditions, and also the indemnification clause included in Article 7, on the understanding that any person or auxiliary person charged by the Counterparty or a third party may only exercise the indemnification clause if duly authorized by Factory Spotter, in writing.

Article 7. Indemnification

The Principal and/or Counterparty shall indemnify Factory Spotter, as well as the (auxiliary) persons and/or companies engaged by or via Factory Spotter, in respect of all claims of the Counterparty and/or third parties against whom these General Terms & Conditions and/or any other conditions mentioned herein cannot be invoked, insofar as liability would be excluded and/or limited by these conditions, as if that third party would have been bound by these General Terms & Conditions and/or the conditions set out herein.

Article 8. Licenses/obstacles/restrictions/force majeure

1. In the event that, in the performance of any Agreement, Factory Spotter has to apply for licences, all in the broadest sense of the word, in order to perform the Agreement, the dates for obtaining the requisite licences as indicated by Factory Spotter shall be indicative and shall never be regarded as firm dates, as the possible granting of licences and how long this process takes is beyond the control of Factory Spotter.
2. The Principal and/or Counterparty shall, on first request, provide Factory Spotter with all the requisite information it requires for the purposes of supplying information to Clients. The Principal and/or Counterparty shall at all times be directly responsible for the information supplied to Factory Spotter in this connection. Factory Spotter excludes all liability for information received and does not verify the information supplied.
3. Licensing processes may change due, for example, to local laws. Factory Spotter excludes, in advance, any liability for changes to such processes.
4. Factory Spotter does not accept on any other terms any liability when executing the assignment and/or Agreement, if Factory Spotter is not able to perform because of force majeure.

Article 9. Expiry, prescription

All claims against Factory Spotter and/or by Factory Spotter or the persons or auxiliary persons engaged by the latter and/or their personnel and/or the personnel of Factory Spotter shall be prescribed by the simple lapse of a period of twelve (12) months from the time at which the claim arose, unless the claim has been brought before the competent court or a competent arbitration tribunal.

Article 10. Latest version

Unless specifically agreed otherwise, pursuant to Article 2 the most recent version of the conditions of these General Terms & Conditions of Factory Spotter shall apply to the Agreement with the Principal.

Article 11. Applicable law, jurisdiction

1. All Agreements with Factory Spotter are governed by the laws of the Netherlands.
2. All disputes between Factory Spotter and a Principal which cannot be settled amicably shall be exclusively referred to the competent in Amsterdam, The Netherlands. This paragraph also applies for any auxiliary persons and/or their personnel engaged by Factory Spotter for the performance of the Agreement.

Amsterdam, May 1, 2020

Factory Spotter B.V. Oude Braak 21, 1012 PS, Amsterdam

www.factoryspotter.com

VAT no.