

## GENERAL CONDITIONS OF DELIVERY

filed with the Chamber of Commerce at Dordrecht on 1st March 1993.

### Art. I General

1. Whenever these General Conditions of Delivery form part of tenders and contracts for the performance of deliveries and/or services by the Contractor, all the stipulations of these Conditions shall be operative between the parties, except where explicitly agreed otherwise in writing by both parties. The Contractor will not accept any reference by the Purchaser to the latter's conditions of purchase, invitations to render or otherwise.

2. In these Conditions of Delivery the following term is understood to mean:

- Goods: objects as well as services, including maintenance, advice and inspection;

In these Conditions of Delivery also the following terms are understood to mean:

- Contractor: anyone referring in this tender to these Conditions of Delivery;
- Purchaser: anyone to whom the aforesaid tender is addressed;
- Service: contracting of work.

### Art. II Tender

1. All tenders of the Contractor are made without engagement.
2. Tenders are based on execution of orders under normal conditions and during normal working hours.

### Art. III Contract

1. If the contract is made in writing, it shall become effective on the date the contract is signed by the Contractor, or on the day the written confirmation of order is mailed by the Contractor respectively.
2. Additional work shall be considered to include anything delivered and/or fitted by the Contractor in consultation with the Purchaser put in writing or otherwise, during the performance of the contract, in excess of the amounts explicitly laid down in the contract or the confirmation of order, as well as any performance in excess of the work explicitly laid down in the contract or the confirmation of order.
3. Verbal promises by and arrangements with subordinate employees of the Contractor shall not be binding upon the Contractor until and insofar as they have been confirmed by the latter in writing.

### Art. IV Price

1. The prices quoted by the Contractor are exclusive of turnover tax and any other government duties relating to the sale and delivery and are for delivery ex works according to Inco terms valid on the date of tender unless otherwise stipulated in these conditions. Works are meant to include the Contractor's company grounds.
2. If one or more of the cost-price factors should be raised after the date of offer - even if this is due to foreseeable circumstances - the Contractor shall be entitled to increase the contract price accordingly.
3. Within the contract, the Contractor is authorized to charge separately for any additional work executed by him as soon as the amount to be charged is known to him. For the calculation of additional work, the provisions of Para 1 and 2 of the present Article shall apply in like manner.

4. Unless otherwise agreed, cost estimates and plans will not be charged separately. If the Contractor has to make new drawings, calculations, descriptions, patterns or tools, etc. for any supplementary orders, the costs of same will be charged.
5. Packing is not included in the price and will be charged separately. Packing will not be taken back.
6. Costs of loading, unloading and transportation of raw materials, semi-finished products, patterns, tools and any other articles made available by the Purchaser are not included in the price and will be charged separately. Any costs paid in this respect by the Contractor will be considered as advance payments chargeable to the Purchaser.
7. If the Contractor has undertaken to assemble the goods, the price will include costs of assembly and delivery of the goods in proper working order in the location stipulated in the offer, as well as all costs other than those referred to in the preceding paragraph and in Article VII. Any costs incurred on account of inclement weather conditions shall be passed on.

### Art. V Drawings, calculations, descriptions, patterns, tools, etc.

1. Any data mentioned in catalogues, illustrations, drawings, statements of weights and measures, etc. shall not be binding, unless explicitly inserted in a contract signed by the parties, or in a confirmation of order signed by the Contractor.
2. The tender made by the Contractor, and the drawings, software programs, calculations, descriptions, patterns, tools etc., made or supplied by him shall remain the property of the Contractor, even if the costs thereof were charged. The information contained in or relating to the manufacture and construction methods, products etc. shall remain the exclusive property of the Contractor, whether any costs have been charged or not. The Purchaser shall see to it that no data concerning the Contractor's methods of manufacturing and/or construction - except for the execution of the contract - are copied, shown to third parties, made public or used without the Contractor's explicit permission.

### Art. VI Time of delivery

1. The delivery period shall run from the latest of the following dates:
  - a. the date of concluding the contract;
  - b. the date of receipt by the Contractor of the documents, data, permits, etc. required for the execution of the order;
  - c. the date of completion of the formalities required for commencing the work;
  - d. the date of receipt by the Contractor of the sum to be paid in advance before commencement of the activities in accordance with the contract.

If a date or week of delivery has been agreed upon, the delivery time shall be the period between the date of formation of the contract and the date c.q. week of delivery.

2. The time of delivery is based on the working conditions prevailing on the date of concluding the contract, and on timely delivery of the materials ordered by the Contractor for the execution of the work. If, due to circumstances beyond the Contractor's control, a delay occurs as a result of a change in the said working conditions or of a delay in the delivery of materials ordered in time for the execution of the work, the delivery time shall be extended, if necessary.
3. With regard to the time of delivery, the goods shall be considered as delivered, if testing at the Contractor's works has been agreed upon, when they are ready for resting or shipment, after the Purchaser has been notified thereof in writing without prejudice to the Contractor's obligation to fulfill his duties to assemble or erect the goods.

4. Notwithstanding any other provisions in these conditions regarding extension of the delivery time, the delivery time will be extended by the period of delay occurred at the Contractor's, due to the non-fulfillment of any commitment agreed upon or co-operation required from the Purchaser with regard to the execution of the contract.
5. Except in case of gross negligence by the Contractor, the Purchaser shall not be entitled to wholly or partially dissolve the contract if the delivery time is exceeded. Any delay in delivery – through any cause whatsoever – shall not entitle the Purchaser to carry out work or have work carried out, either with or without the authority of the court, for the execution of the contract.
6. A contractual fine imposed for a delay in delivery shall be ruled to replace a possible right to damages by the Purchaser. Such a fine shall not be due if the delay is caused by force majeure.

#### **Art. VII Assembly**

1. The Purchaser shall be fully responsible vis-à-vis the Contractor for the correct and timely execution of all constructions, provisions and/or conditions which are required for the erection of the goods to be assembled and/or the proper operation of the goods when assembled, unless the said constructions and/or provisions are executed by or on behalf of the Contractor in accordance with data and/or drawings supplied or made by or on behalf of the latter.
2. Without prejudice to the provisions of Para. 1 of this Clause the Purchaser shall see to it, at his own expense and risk that:
  - a. the Contractor's personnel can start work as soon as they have arrived at the erection site and can continue to perform their duties during normal working hours, and, moreover, outside normal working hours if the Contractor should deem it necessary, provided that the Purchaser is notified in time;
  - b. suitable accommodation and all facilities by virtue of regulations, general customs or this contract are made available to the Contractor's personnel;
  - c. the approaches to the erection site are suitable for transport;
  - d. the erection site is suitable for storage and assembly;
  - e. the necessary storage places, capable of being locked, are available for the storage of materials, tools and other goods;
  - f. the necessary and customary assistants, auxiliary machinery, materials and supplies (including fuel, oils and grease, cleaning rags and other small supplies, gas, water, electricity, steam, compressed air, hearing, lighting etc.), and any measuring and resting equipment in accordance with general practice of the Purchaser's branch of industry, are put at the Contractor's disposal free of charge. at the proper time and in the proper place;
  - g. all the necessary safety measures and precautions have been taken and are being maintained as well as that all measures and precautions have been taken and are maintained in order to comply with the appropriate government regulations for the assembly/erection of the goods;
  - h. the goods shipped are available in the proper place at the beginning of and during the assembly.
3. Damages and expenses incurred through non-fulfillment or tardy fulfillment of the conditions laid down in this Article shall be borne by the Purchaser.
4. Article VI of these conditions will be accordingly applicable to the period of time of assembly/erection.

#### **Art. VIII Inspection and acceptance tests**

1. The Purchaser shall rest the goods within 14 days of delivery at the latest as meant in Article VI. Para.3. respectively – if assembly/erection has been agreed upon – within 14 days after assembly/erection at the latest. Should this period expire

without a written and specified report of valid complaints the goods are deemed to have been accepted.

2. If an acceptance test has been agreed upon the Purchaser shall enable the Contractor, after receipt of the goods or after assembly/erection to carry out the necessary rests as well as to make any improvements and changes deemed necessary by the Purchaser. The acceptance rest shall be carried out without any delay at the request of the Contractor in the presence of the Purchaser. If the acceptance test has been carried out without any specified and valid complaint and also if the Purchaser does not meet his obligations as stated above, the goods are deemed to have been accepted.
3. The Purchaser puts at the disposal of the Contractor for the acceptance test and other possible tests the required facilities among which those stated in Art. VII Para. 2 provision f., as well as sufficient quantities of representative samples of materials which could be used or processed in time and without charges at the right place in order to imitate as much as possible the circumstances and conditions for use as anticipated by the parties. If the Purchaser does not comply with the above, Para. 2, last sentence shall apply.
4. In the event of insignificant defects, especially those which do not or hardly affect the anticipated use of the goods. the goods are deemed to have been accepted irrespective of these defects. The Contractor shall remedy such defects as soon as possible.
5. Notwithstanding the Contractor's liability to fulfill his guarantee obligations, acceptance in accordance with the provisions above shall exclude any claim of the Purchaser regarding any fault in the performance of the Contractor.

#### **Art. XI Passing of risk and ownership**

1. Immediately after the goods are considered as delivered within the meaning of Art. VI Para. 3, the Purchaser shall bear the risk with regard to any and all direct and indirect damages that may be caused to or by such goods due to gross negligence of the Contractor. If the Purchaser after having been served notice still remains in default to accept the goods, the Contractor shall be entitled to charge the storage costs of the goods to the Purchaser.
2. Without prejudice to the provisions of the preceding paragraph and of Art. VI. Para. 3, the ownership of the goods shall not pass to the Purchaser until all the amounts due to the Contractor in respect of deliveries or work, including any interest and costs, have been fully paid.
3. In this event the Contractor shall be entitled to have free access to the goods. The Purchaser shall give the Contractor any assistance in order to enable the Contractor to exercise the reservation of title according to Para. 2 by taking back the goods including the possibly necessary dismantling.

#### **Art. X Payment**

1. Unless otherwise agreed payment of the price agreed upon will be done in 2 terms:  
1/3 (one third) within 7 days after formation of the contract  
2/3 (two thirds) within 14 days after delivery according to Art. VI Para. 3.
2. The costs of additional work shall be paid as soon as they are charged to the Purchaser.
3. All payments shall be made at the office of the Contractor or to an account designated by him without any deductions or set-offs.

4. If the Purchaser fails to pay by the agreed dates, he shall be deemed ipso jure to be in default, and the Contractor shall be entitled, without any notice of default being required, to charge interest at a percentage of 4 points above the official discount rate for drafts of the Dutch central bank, and in addition all judicial and extra-judicial charges falling on the collection of the debt.

#### **Art. XI Guarantee**

1. Subject to the restrictions set forth hereinafter, the Contractor guarantees both the soundness of the goods supplied by him and the quality of the materials used and/or supplied, as far as it concerns defects imperceptible when the goods were inspected respectively tested for acceptance, which are proved by the Purchaser to have occurred within 6 months after the delivery within the meaning of Article VI Para 3, exclusively or mainly as a direct consequence of an inaccuracy in the Contractor's design or due to poor workmanship or inferior material.
2. Para. 1 is accordingly applicable to imperceptible defects when the goods were inspected respectively tested for acceptance, which defects were exclusively or mainly due to the faulty assembly/erection by the Contractor. If assembly/erection is carried out by the Contractor the guarantee period of 6 months as referred to in Para.1 shall start on the date of completion of the assembly/erection by the Contractor, provided that the guarantee period will be terminated in any event when a period of 12 months after delivery has passed according to Art. VI Para. 3.
3. The defects covered by the guarantee as meant in Paras. 1 and 2 shall be repaired or replaced by the Contractor either at the Contractor's works or by forwarding the part to be replaced, at the Contractor's choice. Any costs exceeding the sole obligation as stated in the previous sentence, such as, but not limited to costs of transport, travel expenses as well as costs of dismantling and assembly, shall be for the account of the Purchaser.
4. No guarantee will be given in the event of defects, which occur to or are wholly or partly due to:
  - a. non-compliance with operation and maintenance regulations or use other than the anticipated regular use;
  - b. normal wear and tear;
  - c. assembly/erection or repair by third parties, including the Purchaser;
  - d. implementation of any government regulation regarding the nature or quality of the materials applied;
  - e. materials or goods applied in consultation with the Purchaser;
  - f. materials or goods supplied for processing by the Purchaser to the Contractor;
  - g. materials, goods, methods, constructions, as far as applied by explicit order of the Purchaser, as well as materials and goods supplied by or in the name of the Purchaser;
  - h. parts bought from third parties by the Contractor as far as third parties did not give a guarantee to the Contractor.
5. If the Purchaser does not fulfill any obligation arising from the contract concluded with the Contractor or from a contract connected therewith, or does not fulfill same properly or in time, the Contractor shall not be bound by any guarantee whatsoever with regard to these contracts.  
If the Purchaser, without preceding written approval by the Contractor, dismantles, repairs or carries out any other activity concerning the goods, or has same dismantled, repaired or carried out by other parties, and guarantee claim shall be void.
6. Any claim in respect of defects shall be made in writing as soon as possible and not later than 14 days after expiration of the guarantee period, any claims vis-à-vis the Contractor in respect of such defects submitted after that date becoming void. Legal actions in this respect shall be commenced within one year after the timely claim on penalty of dissolution.

7. If the Contractor replaces any parts under his guarantee obligations, the parts so replaced shall become the property of the Contractor.
8. In respect of repair, overhaul or other services carried out by the Contractor, the guarantee shall only apply to the proper execution of the work concerned for a period of 6 months, unless agreed otherwise. This guarantee includes the sole obligation of the Contractor to carry out improper work, properly again. In that event the second sentence of Para. 3 is applicable correspondingly.
9. The Contractor does not guarantee inspections carried out, advice and similar activities.
10. Alleged non-fulfillment of the guarantee obligations by the Contractor shall not release the Purchaser from the obligations arising from any contract concluded with the Contractor.

#### **Art. XII Liability**

1. The Contractor's liability shall be limited to the fulfillment of the guarantee obligations as set forth in Article XI.
2. Without prejudice to gross negligence by the Contractor and the provisions of Para. 1 the Contractor shall not be liable for any loss of profit, any other indirect loss and loss due to third party risk.
3. The Contractor shall not be liable for:
  - infringements of patents, licenses or other rights of third parties as a result of the use of data supplied by or on behalf of the Purchaser;
  - damage or loss, by any cause whatsoever, of raw materials, semi finished models, tools and other materials, made available by the Purchaser.
4. If the Contractor, without being charged with the assembly, renders aid and assistance of any nature whatsoever, in the assembly, this shall be at the Purchaser's risk.
5. The Purchaser shall be bound to indemnify the Contractor against any claims for compensation by third parties, for which the Contractor's liability towards the Purchaser has been excluded in these terms of delivery.

#### **Art. XIII Force Majeure**

In the present General Conditions of Delivery, the term force majeure shall be understood to include any and all circumstances beyond the Contractor's control, even if these were already foreseeable at the time the contract was concluded, that permanently or temporarily prevent fulfillment of the contract, including also war, danger of war, civil war, riots, strikes, lock-out, transport difficulties, fire and other serious interruptions in the business activities of the Contractor or of the Contractor's suppliers.

#### **Art. XIV Suspension and cancellation**

1. In the event of inability to perform the contract as a result of force majeure, the Contractor shall be entitled to suspend the performance of the contract for no more than 6 months, or to cancel the contract in full or in part, without being liable in damages and without judicial intervention being required. During the period of suspension the Contractor shall be entitled, and at the end of such period he shall be obliged to decide on performance or on full or partial cancellation of the contract.
2. Both in the event of suspension and in that of cancellation by virtue of Para. 1, the Contractor shall be entitled to demand immediate payment of raw and finished materials, parts and goods allocated, processed and manufactured by him in performance of the contract, at the value reasonably assigned thereto. In the event of cancellation by virtue of Para. 1, the

Purchaser shall be bound, after payment of the amount due in accordance with the preceding provision, to take delivery of the materials concerned, in default whereof the Contractor shall be entitled to store the materials for the account and risk of the Purchaser or to sell them for the latter's account.

3. If the Purchaser does not fulfill any obligation arising from the contract concluded with the Contractor or from a contract connected therewith, or does not fulfill same properly or in time, or if it is open to serious doubt whether the Purchaser is capable of fulfilling his contractual obligations vis-à-vis the Contractor, as well as in the event of bankruptcy, suspension of payment, closing down, winding up or full or partial transfer – whether or not as security – of the business of the Purchaser, including the transfer of a major part of the latter's receivables, the Contractor shall be entitled, without notice of default and without judicial intervention being required, either to suspend the performance of each of these contracts for no more than 6 months, or to cancel them in full or in part, without being liable in damages or bound by any guarantee, and without prejudice to his further rights. During the period of suspension, the Contractor shall be entitled, and at the end of such period he shall be obliged to decide on performance or on full or partial cancellation of the suspended contract(s).
4. In the event of suspension by virtue of Para.3, the contract price shall become immediately payable, after deduction of any installments already paid and the costs saved by the Contractor in consequence of the suspension, and the Contractor shall be entitled to store [he raw and finished materials, parts and goods allocated, processed and manufactured by him in performance of the contract for the account and risk of the Purchaser. In the event of cancellation by virtue of Para. 3, the contract price – if no prior suspension has taken place – shall become immediately payable, after deduction of any installments already paid and the costs saved by the Contractor in consequence of the cancellation, and the Purchaser shall be bound to pay the amount referred to above, and CO take delivery of the materials concerned, in default whereof the Contractor shall be entitled to store the materials for the account and risk of the Purchaser or to sell them for the latter's account.
5. The Purchaser shall not be entitled to demand retroactive cancellation of the contract.

#### **Art. XV Disputes**

1. Without prejudice to the applicability of Para. 2 of this Article and the possibility to apply for a temporary injunction to the President of the competent District Court, any disputes arising from a contract to which the present Conditions of Delivery apply in full or in part, or arising from further agreements proceeding from such contract, shall be settled to the exclusion of the ordinary courts, by a board of arbitration. This board of arbitration shall be appointed in accordance with the Regulations of the "Stichting Raad van Arbitrage voor Metaalnijverheid en -Handel" at The Hague, and shall make its award with due observance of the Regulations of said Council.
2. Insofar as the disputes described in the previous paragraph come within the jurisdiction of the cantonal court, according to the rules of the Dutch law of civil procedure, only the authorized cantonal judge shall settle the dispute.

#### **Art. XVI Applicable law**

All contracts to which these Conditions apply in full or in part shall be governed by Netherlands law, prevailing for the Kingdom in Europe.