

TERMS OF DELIVERY AND PAYMENT

registered under number 180/1993 with the county court in The Hague

Article I General

1. These terms of delivery and payment apply to all our quotations, to all orders received by us and all agreements made with us. Any reference to own general terms by customer at any stage of the establishment of the agreement with us is explicitly rejected. In so far as they conflict with written terms of purchase, of contract or other terms of customer, our terms take precedence, except in case and in so far as customer's terms have been explicitly accepted by us in writing.
2. In these general terms, 'Customer' is understood to mean: any natural person or corporate body who purchase products from us or whom we make offers. 'We' or 'Us' is understood to mean: supplier who has received an order from customer or has entered into an agreement with the latter, or those who refer to these general terms in their quotation. 'Products' is understood to mean: anything that is the subject of an agreement, as well as all results of service provided by us, such as acceptance of work, assembly, installation, advice, etc.

Article II Offers; conclusion of agreements

1. All our offers or quotations are without engagement, unless explicitly otherwise stated in writing. Each offer or quotation from us is based on the assumption that we will be able to execute the order under normal circumstances and during regular working hours. An agreement is effected only if and in so far as we accept an order from customer in writing or if we carry an order into effect. The day of sending our written order confirmation or the first day of the actual execution of the order by us shall be the date of the conclusion of the agreement.
2. If we perform anything at the request of customer before an agreement has been effected, we have the right to request payment for this in accordance with the prices then prevailing with us, unless explicitly otherwise agreed in writing.
3. In case of a written acceptance from our side, we are bound to no more than what has been accepted by us in writing. Customer is assumed to be bound to his order so long as the order has not been refused by us.
4. Additional and deviating stipulations in the order with respect to our offer or quotation are never binding upon us save if and in so far as these stipulations have been explicitly accepted in writing by us.
5. All statements of numbers, measures, weights and/or other descriptions of the products given by us have been given with care, but we can not guarantee that deviations will not occur. Samples, drawings or models etc. shown or provided are always merely indications of the products in question.

Article III Prices

1. Unless explicitly otherwise agreed in writing, our prices are ex-works, so exclusive of for example transport and/or shipment, packing, insurance and any duties or taxes by the government or other duties, as well as all costs relating to anything put at our disposal by customer as part of the execution of the order.
2. If after the date of conclusion of the agreement in accordance with article II paragraph 1 the prices of materials, resources, parts, raw materials, wages, salaries, social security and government costs increase before the order has been completely executed, we are entitled to increase our prices accordingly.
3. We are authorized to charge for extra work carried out by us separately, such also if the extra work has not been ordered in writing and/or if the price thereof has not been agreed on in advance. With regard to the calculation of the price for the extra work, the provisions of the above paragraphs of this article apply accordingly. The applicability of BW (Civil Code) 7a: 1646 is explicitly excluded.
4. If assembly or installation of products supplied is explicitly included in our order confirmation and is therefore part of the agreement concluded with customer, the price described in this article has been calculated inclusive of assembly or installation and the delivery in working order of the products in the place stated in the agreement. The costs and financial consequences stated separately in article VI of customer's obligations described there are not included in this price, save if and in so far as explicitly included in our order confirmation.

Article IV Packing

Unless explicitly otherwise agreed in writing, the products will - if necessary and at our sole discretion - be provided with a packing in which the products are usually sold; all this in compliance with the provisions of article III paragraph 1. Unless otherwise agreed in writing with customer, we will not take back the packing.

Article V Documents, aids and advice

1. Cost estimates, plans, catalogues, illustrations, drawings, measures and weight specifications drawn up, made or made available by us, or other documents belonging to quotations or supplies, as well as aids and tools shall remain our property at all times - also if the manufacturing costs have been charged to customer - and shall be returned to us on first request.
2. Save in case of permission in writing from our side, customer guarantees that the documents, aids and information given by us as described in the above paragraph shall not be copied or reproduced or submitted for perusal or handed to a third party, whether for reuse or not. We are entitled to require from customer that he cooperates in signing a certificate of confidentiality presented by us.
3. In accordance with the provisions of article II paragraph 5 we are only bound by advice, calculations, communications and statements with regard to capacities, results and/or anticipated performances of products to be supplied or work to be carried out if and in so far as such details are contained in our written order confirmation or form part of the written agreement concluded separately between us and customer.

Article VI Assembly; installation

1. Customer shall ensure that the necessary facilities, provisions and conditions for the assembly or installation work to be done by us are or have been provided for in time and in the proper way. These arrangements and other activities to be carried out in this respect shall at all times be for account and risk of customer.
2. Customer shall among others ensure for own account and risk that our mechanics are enabled to carry out the work. With observance of necessary safety regulations and other precautions, he shall provide for the necessary aids and shall render the necessary assistance, either personally or by assistant workers made available by him. Customer shall take care that suitable housing and other personal facilities will be available to our mechanics.
3. Travelling expenses shall be charged to customer separately. Different from the provisions of article III paragraph 4, we reserve the right to charge extra labour costs separately in case we are, in our opinion, forced to carry out the work outside regular working hours and/or under special circumstances, contrary to the assumption contained in article II paragraph 1.

4. The provisions of article VII with regard to the delivery time also applies to the assembly or installation time agreed on. A running-in time of machinery, installations etc. assembled by us will not be included in the assembly or installation agreed on with us.
5. With regard to price, delivery, risk and warranty with respect to assembly or installation, the provisions of the relevant articles of these terms apply, subject to the stipulations of this article.

Article VII Delivery time

1. The delivery time, which also comprises the time for work to be carried out by us will run from the day mentioned in our written order acceptance. If for the execution of the order certain data, drawings, etc. or certain formalities are required, the delivery time will run from a later date, namely the moment that all data, drawings etc. are in our possession or the required formalities have been fulfilled. If we request a first payment with the order, the delivery time will not run until from a date later than the written order acceptance or receipt of the above mentioned documents, namely from the moment we are in receipt of this payment.
2. The delivery times stated by us are not fatal and always without obligations. Their mere expiration does not mean default. We will do everything possible to comply with the delivery times stated as carefully as possible. Save in cases of intent or gross guilt, exceeding the delivery time does not authorize customer to claim damages, to refuse the product or to completely or partially annul the agreement.

Article VIII Force majeure

1. Force majeure for us means: any circumstance beyond our control, because of which fulfillment of our obligations to customer is prevented in whole or in part or because of which the fulfillment of our obligations can not in reasonableness be demanded of us, regardless of whether the circumstance was anticipated at the time of conclusion of the agreement. We shall inform customer about a situation beyond our control as early as possible.
2. In any case all circumstances of force majeure such as war, risk of war, civil war, insurrection, hostage situations, molest, fire, water damage and flood, strike, occupation, exclusion, shortage of work forces or raw materials, failure of machinery or installations, or of energy supply, all with our company as well as with a third party from whom we have to purchase the necessary materials or raw materials in whole or in part, as well as in storage or in transit whether in own control or not, and furthermore by all other causes arisen through no fault of our own, relieve us of any obligation to fulfillment of our obligations, including the delivery time, for as long as the obstruction in question exists. Claims to compensation on account of partial or complete non-fulfillment are also excluded in above mentioned cases.
3. If the circumstances beyond our control have lasted for six months, we have the right to cancel the agreement in writing in whole or in part. In such case customer shall not be entitled to any compensation.

Article IX Delivery

1. After the products in question have left our factory or after we have informed customer in writing that the products are ready for shipment, they are considered delivered, without prejudice to the provisions of article XI and regardless of any obligation on our part to meet assembly and installation engagements. Place of delivery therefore is our factory, even if carriage paid and/or transport by us has been agreed on. In case of partial deliveries the individual lots are each considered delivered.
2. Partial deliveries. We are allowed to deliver items sold in part. In case of partial deliveries, we are entitled to invoice each part separately.

Article X Risk

1. The risk passes to customer at the time of delivery as meant in article IX. Also in case of damage to products, caused by destruction of the packing, the provision of the previous sentence applies undiminished.
2. If the products are not, not betimes or not duly bought by customer, customer will be in default without being declared liable. We are then entitled to store the products or sell them to a third party for account and risk of customer. Customer shall owe the purchase price increased by the interest and all costs, however, decreased by the net amount from the sale to the third party, should the case arise.
3. Unless otherwise agreed in writing with customer, if arranged for by us, shipment and/or transport of the products shall take place for account and risk of customer and the products shall not be insured against transport risk by us. Even if we have declared to the carrier that all damage during transport is for our account, the transport risk shall nevertheless be for account of customer and we shall not be obliged to take steps to recover damages. If desired we will assign our rights towards the carrier to customer.
4. Save in case explicitly otherwise agreed in writing, products that have been supplied to us for machining, repair or inspection are in our keeping for customer's risk. We are obliged to keep and handle products supplied to us by customer with the necessary carefulness.

Article XI Ownership Reservation

1. The property in the products does not pass over to customer until he has fulfilled all obligations resulting from the agreement or any other allied agreement. Besides payment of the purchase price, obligations include among others the work done or to be done on account of the products, as well as all relevant additional charges, interests, taxes and costs etc. arising from the agreement.
2. Customer is not entitled to alienate, to put in pawn, to hypothecate or to mortgage these products prior to this point of time, or to transfer them to a third party in any other way. Customer is authorized to work on and to process or to use these products in accordance with his normal conduct of business.
3. Customer shall immediately enable us to take back the products delivered, without further holding liable or judicial intervention. Without prejudice to our other rights we are now being irrevocably authorized by customer to then disassemble and take back on demand the products supplied by us and the products attached to movables or immovables without declaring in default or judicial intervention in case he does not, does not betimes or does not duly fulfill his (payment) obligations to us.
4. Customer is bound to immediately inform us in writing about the fact that a third party (could) assert rights to the products in which the property remains in us. In case customer will appear not to have fulfilled this obligation, he shall owe a fine of 15% of the unpaid portion of the debts which the ownership reservation relates to, without prejudice to our other rights on account of these debts.
5. Each payment we receive from customer will in first instance serve to settle the claims we have on customer in regard to which ownership reservation as meant in paragraph 1 of this article does not apply (any more).

Article XII Credit Squeeze

The invoice amount may be increased by us by an additional charge for credit squeeze which will be stated separately on the invoice. In case of payment within 30 days of the date of the invoice, the additional charge mentioned does not need to be paid.

Article XIII Payment

1. Unless otherwise agreed in writing, payment of the purchase price and/or the price agreed on for work to be done or work that has been done by us is due at our choice cash on delivery or within 30 days of delivery in accordance with the provisions of article IX. All payments shall be made place without any deduction or settlement. If customer feels he has any rights with regard to the delivery or the execution of the order, in any shape or form, this does not dispense him from the obligation to pay in the manner agreed on and he shall not be entitled to suspend his payment obligation.
2. If payment by instalments has been agreed on, this shall take place as follows - save explicitly otherwise written arrangements between parties:
1/3 (one third) on order;
1/3 (one third) when the products are put ready for shipment, or on completion of the work done by us;
1/3 (one third) within one month of the expiry of the second instalment.
3. Payment of extra work is due as soon as this has been invoiced by us to customer.
4. If at any time reasonable doubt exists with us regarding customer's solvency, we are entitled to demand complete or partial prepayment of the purchase price or from customer to give security by means of for example a bank guarantee or a limited hypothecation of products delivered by us, prior to (further) performance. In such case we are also entitled to ship cash on delivery only.
5. In case we have agreed with customer that payment will be effected via a banking institution or if security is given by means of documentary credit or bank guarantees, customer guarantees that this shall take place via a first-class bank. If we have any doubt in reason about said qualification, we are entitled to reject the bank proposed and to appoint a different bank.
6. The mere expiry of any term of payment, makes customer in default according to the law. In this case all our claims on customer in whole shall be repayable on demand, without prejudice to any of our other rights.
7. Without the need for being declared in default, customer owes interest on all amounts that have not been paid ultimately on the last day of the payment term, from that day on, equivalent to the statutory interest rate in The Netherlands at that time, increased by an extra 2%. Each time a year has gone by, the amount over which the interest is calculated shall be increased by the interest due over that year. If customer has not paid the amount and interest due even after expiry of a later payment term determined in writing, customer is obliged to compensate us for all extrajudicial and judicial costs which will be determined at 15% of the outstanding amounts due minimally and will always amount to at least f 250.00 exclusive of value added tax.
8. We are entitled to keep and to suspend the delivery of customer's objects that have been put at our disposal in connection with the order given to us until customer has fulfilled all his payment obligations towards us.

Article XIV Annulment

1. If customer does not, does not betimes or does not duly fulfil any obligation that may result from the agreement concluded with us, he will be in default and we are entitled to the following, without being declared in default or judicial intervention:
 - to postpone the execution of the agreement and the directly related agreements until payment has been adequately guaranteed; and/or
 - to annul the agreement and the directly related agreements in whole or in part; all this without prejudice to our other rights and without us being bound to any compensation.
2. In case of bankruptcy, moratorium, shutting down or liquidation of customer's business, all agreements with customer shall be annulled according to the law, unless we inform customer within a reasonable term that we wish execution of (part of) the agreement(s) in question, in which case without being declared in default we shall be entitled:
 - to postpone the execution of the agreements in question until payment has been adequately guaranteed; and/or
 - to suspend any payment obligations we have towards customer for whatever reason; all this without prejudice to our other rights and without us being bound to any compensation.
3. In case of an event as meant in paragraph 1 or paragraph 2 of this article, all our claims on customer shall be immediately and completely claimable and we are entitled to take back the products concerned. In that case we shall be entitled to enter customer's grounds and buildings, in order to take possession of the products. Customer is obliged to take the necessary measures in order to enable us to execute our rights.

Article XV Cancellation

1. If customer wishes to cancel the order submitted to us and we have agreed to this in writing, customer is obliged - subject to written arrangement reading otherwise - to take over from us the materials and raw material purchased by us be it futures or not, whether machined or processed or not, at the price we have paid, including wages and to indemnify us for inter alia loss of profit by payment of 15% of the price agreed on; all this without prejudice to our other rights. In case we have entered into an exchange agreement with a bank or a third party in connection with the order, customer shall also be obliged to compensate us for the exchange losses resulting from the cancellation.
2. Customer is obliged to indemnify us against third-party claims as a result of the cancellation of the order at all times.

Article XVI Inspection and complaints

1. Customer is obliged to carefully inspect the products or have them inspected immediately after arrival at the destination or after completion of the work done by us, or - if this is earlier - after receipt by himself or by a third party acting by his order. Any complaints about shortcomings in the products that can be attributed to faulty material or manufacturing defects, as well as discrepancies in quantity, weight, composition, quality between the products supplied and their description on the order confirmation and/or invoices must be communicated to us in writing within fourteen days at the most of arrival of the products or completion of the work, without prejudice to the provisions in paragraph 3 of this article. If, however, a trial or test has taken place in our factory, complaints must be submitted during this trial or test and laid down in writing.
2. Defects that cannot in reasonableness be established within the term mentioned above must be reported to us in writing immediately after discovery but still ultimately within the appropriate warranty period. Complaints with regard to invoices cannot be submitted unless in writing within fourteen days of receipt of the invoices, in which case the date of receipt is determined at one day after the date of the subject invoice.
3. Minor discrepancies with the usual tolerances shall be no reason for customer to complain, to claim damages or to request cancellation of the order.
4. If complaints are not submitted within the periods stipulated in this article, customer will lose all claim with regard to the defects.
5. After the discovery of any defect, customer is obliged to immediately cease the use, the machining, the processing or installation of the products concerned and he shall render full assistance required by us for investigation of the complaint, inter alia by enabling us to carry out an on-site investigation (or have it carried out) of the circumstances of machining, processing, installation and/or use.
6. Customer is not entitled to complain with respect to products, in regard to which verification of the complaint cannot be executed by us. Customer is not at liberty to return the products prior to our written agreement.

Article XVII Guarantee

1. We give guarantee for material and manufacturing defects for a period of six months after delivery in the sense of article IX. Our guarantee implies that we shall correct the defects or - this at our sole discretion - to take back what we delivered in whole or in part and replace it with a new delivery at our expense. If we replace (parts of) products supplied in order to fulfil our guarantee obligations, the (parts of) products replaced shall become our property.

All costs that exceed the obligation described above are at customer's expense, such as among other things cost of transportation, travelling expenses and costs of disassembling and assembling. In case we carry out repairs to products supplied in order to fulfil our guarantee obligations, the products in question shall remain entirely at customer's risk.
2. Our guarantee does not apply:
 - A) if the defects are due to injudicious use or to other causes besides inferior material or manufacture;
 - B) if we supply used material or used goods in accordance with the order;
 - C) if the cause of the defects cannot clearly be demonstrated;
 - D) if all instructions given for the use of the products and other specifically applicable guarantee regulations have not been strictly and completely complied with.
3. If products are provided for machining, repair, etc., guarantee is only given for the good quality of the execution of the processing assigned. For parts that we do not manufacture ourselves, we shall guarantee no more than the guarantee given to us by our suppliers. If we have bound ourselves to assemble or to install the products, our guarantee obligation with respect to that only applies in case of inferior assembly or installation. When such is the case, the guarantee given by us shall begin the day on which in our opinion the assembly or installation has been completed by us, on the understanding that in this case the guarantee period ends anyway nine months after the delivery as meant in article IX.
4. Our guarantee shall lapse if:
 - A) it concerns defects that are completely or partly due to government regulations with regard to the quality or the nature of the materials used or with regard to manufacture;
 - B) customer carries out alterations and/or repairs to the products supplied or has alterations carried out on his own initiative during the guarantee period;
 - C) Customer does not, does not betimes or does not duly fulfil any obligation resulting from this or any other related agreement, such as, inter alia, the obligations with regard to inspection and complaints included in these terms.
5. Unless explicitly otherwise agreed we are exclusively obliged to fulfilment of the guarantee obligations included in this article within The Netherlands.

Article XVIII Liability

1. Our liability is limited to fulfillment of the guarantee obligation as described in article XVII.
2. Save in case of intent or gross guilt by ourselves and except for our guarantee obligations, we are never liable for any damage incurred by customer, including also consequential damage, intangible damage, loss of profits or environmental damage, or damage resulting from third-party liability.
3. If and in so far as we are nevertheless held liable in any case by the competent judge, despite the provisions of paragraphs 1 and 2 of this article, our liability towards customer on whatever account shall be limited to the level of the relevant contract sum, exclusive of value added tax, in all cases, per event (where an interrelated series of events counts as one event).
4. Customer is obliged to protect us against and indemnify us for all costs, damages and interests which we might have incurred as a direct result of third-party claims on us on account of incidents, actions or omissions in or with reference to executing the order, for which we are not liable towards customer according to these terms.
5. We are not liable for violation of patents, licences or other third-party rights due to the use of data which we have been provided with by or on behalf of customer for the execution of the order. If in the written agreement concluded with customer or in our order confirmation we refer to technical, safety, quality and/or other regulations relating to the products, customer is assumed to know these, unless he immediately notifies us otherwise in writing. In that case we shall inform him further about these regulations. Customer binds himself to always inform his buyers in writing of above mentioned regulations.

Article XIX Applicable law; competent judge

1. Dutch law applies to all agreements concluded with us, of which these terms are part in whole or in part. Parties are assumed to have chosen domicile in the place where we have our seat.
2. In so far as not otherwise obligatorily dictated by law, all disputes arising as a result of agreements concluded with us or these general terms shall be amenable to the judgement of the competent judge in our place of business, unless explicitly otherwise agreed in writing by parties.
3. The applicability of the Vienna Trade Treaty is excluded, unless explicitly otherwise agreed in writing by parties.