

TERMS OF DELIVERY AND PAYMENT

April 2023

Registered under number 28029253 with the Chamber of Commerce for The Hague.

Article 1 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 and a signature by a legal representative, either M.P. Otten or P. Otten.
2. In these general terms, 'Customer' is understood to mean: any natural person or corporate body who purchase products or services 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.
3. All our offers and quotations are without engagement, unless explicitly otherwise stated in writing.

Article 2 Specifications

1. All statements of numbers, measures, weights, performance specifications and/or other descriptions of the products given by us have been given with care, but we cannot guarantee that deviations will not occur. Samples, drawings or model etc. shown or provided are indications of the products in question.
2. In case of possible conflicting interpretation regarding the specifications of the products or in case of a dispute concerning the interpretation regarding the specification of the products, our interpretation is leading and decisive.
3. 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 3 Prices

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. In all other cases, for example if the price is based on delivery DDP, thus including costs of transport and all duties and taxes, we will invoice 90% of the price when the order/product is ready at our factory, unless otherwise agreed in writing.

Article 4 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.

Article 5 Confidentiality

Information shared between both parties is to be handled confidentially.

Article 6 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 the customer.
2. Customer shall ensure for own account and risk that our mechanics are enabled to carry out the work required.
3. We reserve the right to charge extra labor costs separately in case we are, in our opinion, forced to carry out the work outside regular working hours and/or under special circumstances.

Article 7 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 agreement or 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. Unless 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.
3. The delivery times stated by us are not fatal and always without obligations. Their mere expiration does not mean default.

Article 8 Force majeure

1. Force majeure for us means: any circumstance beyond our control, because of which fulfilment of our obligations to customer is prevented in whole or in part or because of which the fulfilment of our obligations cannot in reasonableness be demanded of us, regardless of whether the circumstance was anticipated at the time of conclusion of the agreement.
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, pandemic, 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 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

Our Terms and Conditions as mentioned on www.flexologic.nl and as registered under nr. 28029253 at the Chamber of Commerce for Den Haag, are applicable to all our transactions

Customer initial _____

Rabobank Walcheren/ Noord-Beverland
Account nr 172942365
IBAN: NL84RABO0172942365
BIC/SWIFT RABONL2U | VAT No: NL001515561 B01
Registered in Den Haag (NL) No. 28029253

own, relieve us of any obligation to fulfilment 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-fulfilment are also excluded in above mentioned cases.

3. If the circumstances beyond our control have lasted for six months, both parties have the ability and right to cancel the agreement in writing in whole or in part. Any partial payment already received will be returned after subtracting the costs incurred by us.

Article 9 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 11 and regardless of any obligation on our part to meet assembly and installation engagements. Place of delivery therefore is always our factory, even in case the price is based on delivery DDP and 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 10 Risk

1. The risk passes to customer at the time of delivery per the agreed Incoterms, which is ex works by default, unless otherwise agreed in writing. Also in case of damage to products, caused by destruction of the packing, the provision of the previous sentence applies undiminished.
2. Unless 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.

Article 11 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 well 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. In case customer cannot fulfil (payment) obligations to us within the specified payment terms, with a 90-day grace period, customer shall immediately enable and irrevocably authorize us to take back the products delivered, without further holding liable or judicial intervention.
4. In case a final payment is pending after a machine has been installed due to a dispute over technical specifications, there should be referenced to the specifications as per the purchase agreement and/or the service engineer's report of installation and/or the FAT document if available, whichever is available.

Article 12 Payment

1. 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.
2. 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.
3. 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.
4. We are entitled to keep and to suspend the delivery of goods/equipment until customer has fulfilled all his payment obligations towards us. Customer is not entitled to set off or suspend payments.

Article 13 Annulment

1. If customer does not fulfil any obligation that may result from the agreement concluded with us, he will be in default and we are entitled to the following:
 - a. To postpone the execution of the agreement and the directly related agreements until payment has been adequately guaranteed; and/or
 - b. To annul the agreement and the directly related agreements in whole or in part; all this without prejudice to our other rights, without us being bound to any compensation towards customer.
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:
 - c. To postpone the execution of the agreements in question until payment has been adequately guaranteed; and/or
 - d. 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 14 Cancellation

If customer wishes to cancel the order submitted to us and we have agreed to this in writing, customer is obliged to compensate us for the cost already incurred, with an additional payment of 15% of the price agreed on; all this without prejudice to our other rights. Customer is obliged to indemnify us against third-party claims as a result of the cancellation of the order at all times.

Article 15 Inspection and complaints

1. Customer is obliged to carefully inspect the products or have them inspected at the time of delivery (ex works delivery is default) or if otherwise agreed immediately after arrival at the destination. Any complaints about shortcomings in the products 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, where date of receipt is determined at one day after the date of the subject invoice.
3. If complaints are not submitted within the periods stipulated in this article, customer will lose all claim with regard to the defects. Customer is not at liberty to return products prior to our written agreement.
4. The costs of the inspection shall be borne by the customer.
5. Minor discrepancies with the usual tolerances shall be no reason for customer to complain, to claim damages or to request cancellation of the order.

Article 16 Warranty

1. Unless otherwise agreed in writing, we give warranty for material and manufacturing defects for a period of twelve months after delivery in the sense of article 9. Our warranty implies that we shall correct the defect 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 warranty 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 warranty obligations, the products in question shall remain entirely at customer's risk. Our warranty does not apply:
 - a. if the defects are due to injudicious use or to other causes besides inferior material or manufacture;
 - b. if the cause of the defects cannot clearly be demonstrated;
 - c. if all instructions given for the use of the products and other specifically applicable warranty regulations have not been strictly and completely complied with.
2. Our warranty shall lapse if:
 - a. customer carries out alternations and/or repairs to the products supplied or has alterations carried out on his own initiative during the warranty period;
 - b. customer does not, does not betimes or does not duly fulfil any obligations with regard to inspection and complaints included in these terms;
 - c. customer does not, does not betimes or does not duly fulfil any obligations with regard to inspection and complaints included in these terms.

Article 17 Liability

1. Our liability is limited to fulfilment of the warranty obligation as described in article 16.
2. Save in case of intent or gross guilt by ourselves and except for our warranty 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 tasks, 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 these terms.
5. We are not liable for violation of patents, licenses 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 above mentioned regulations.

Article 18 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 obligatory 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.

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