

## **Terms & Conditions Verder B.V. (02031806)**

Filed at the Chamber of Commerce on 29-01-2015

### **1. General**

1.1 These terms and conditions use the following terms and definitions:

**Product:** items, as well as services such as maintenance and inspection;

**In writing:** through a document signed by both parties, or by letter, fax or email, or any other technical means agreed by the parties;

**Contractor:** the person who refers to these conditions in his offer and / or confirmation;

**Client:** the person to whom the offer and / or confirmation is made; in these conditions, service shall also mean: the contracted work.

1.2 These conditions apply to and form an integral part of every offer, contract agreement or legal relationship between the Contractor and the Client. The applicability of any term or provision referred to by the Client, is expressly excluded.

1.3 Deviations from these conditions will only be expressly agreed on in writing.

1.4 These conditions also apply to any complementary or further contracts.

1.5 If one or more provisions of these terms and conditions are invalid or void, the remaining provisions of these conditions will remain in full force and effect, and the Contractor and the Client shall consult to agree on new provisions to replace the original provisions, in which the purpose and intent of the original provisions are observed to the greatest extent possible.

1.6 The Contractor is not required to demand strict compliance with these conditions of the Client, in cases the Contractor deems appropriate.

This does not mean that the Contractor thereby loses the right to demand strict compliance with the conditions of the Client in future - similar or different - cases.

1.7 In the event of any discrepancy between these General Terms and Conditions and the offer in which they are declared applicable, the provisions of the offer shall prevail.

1.8 Contractor reserves the right to modify and/or supplement these conditions. Amended terms are deemed to be accepted if they are not explicitly rejected by the Client within 14 days.

### **2. Offer**

2.1 Any offer made by the Contractor is without obligation.

2.2 Acceptance of the offer occurs in writing by signing the offer within the time period specified in the offer or, if no period is specified, within 30 days after the offer date.

2.3 Each offer is based on the performance of the contract by the Contractor under normal conditions and during normal working hours.

### **3. Agreement**

3.1 Acceptance of the offer and / or granting the contract occurs in writing by signing the offer or a Purchase Order. The actual start of the performance of the contract by the Contractor, including, but not limited to, payment of invoices as sent by the Contractor, shall constitute acceptance of these conditions.

3.2 If and to the extent that an agreement is entered into for a fixed price, only the activities which are part of the agreement are carried out. In case of extra work, in which extra work is regarded as all activities that have not been assessed and offered by the Contractor, and are therefore not part of the agreement, the Contractor has the right to made a supplementary offer, and the concerning work will only be carried out after the offer or a Purchase Order is signed.

3.3 Spoken promises by and arrangements with employees of the Contractor, shall only bind the Contractor to the extent that these have been confirmed by the Contractor.

#### **4. Price and Payment**

- 4.1 The prices quoted by the Contractor exclude VAT and other government charges applicable to sales and delivery and are based on delivery ex works according to Incoterms 2010 EXW applicable on the date of sale, unless otherwise agreed upon. The term "plant" refers to the premises of the Contractor.
- 4.2 If after the date of conclusion of the agreement, one or more of the cost factors increase - even if this occurs due to foreseeable circumstances -, the Contractor is entitled to increase the agreed price accordingly.
- 4.3 The packaging is not included in the price and will be charged separately.
- 4.4 If the Contractor has agreed to install the product / installation, the price is calculated including assembly / installation and operational delivery of the product at the place specified in the offer and includes all costs, excluding costs that are not included in the price according to the preceding paragraphs.
- 4.5 Complaints in response to a received invoice can be made in writing up to 10 days after the invoice date, failing which the right to claim on the concerning invoice is lost.
- 4.6 If the Client fails to timely or completely pay an invoice, the client is legally in default. The Client owes interest to the amount of the statutory interest rate plus 2% (per 14 days). In addition, all costs incurred by the Contractor in obtaining payment in and out of court will be borne by the Client. The extrajudicial costs are set at 15% of the amount due with a minimum of € 150.00.
- 4.7 During the period of non-compliance with the payment obligations by the Client, the Contractor has the right to suspend or postpone its obligations under the agreement or legal relationship.
- 4.8 The Client is not entitled to set-off, unless it is permitted by res judicata ruling.

#### **5. Delivery time**

- 5.1 The delivery time starts after a written confirmation by the Contractor. If the Client needs to provide information, the terms start from the date of receipt by the Contractor, but not earlier than the date of the written order confirmation.
- 5.2 The delivery time is based on the operating conditions prevailing at the conclusion of the agreement, and on the timely delivery of the materials ordered for the execution of the work by the Contractor, and, insofar dependent on the performance of third parties, on the information provided to the Contractor by third parties. The delivery period and / or implementation period will be observed by the Contractor as much as possible, but it is not a deadline. If a delay is caused by changes in said working conditions, or because of materials required for the implementation of the work not being delivered on time, the delivery time will be extended as necessary.
- 5.3 With respect to the delivery time, the Product is regarded as delivered when, if inspection in the company of the Contractor is agreed on, it is ready for inspection and in other cases when it is ready for delivery, everything after the Client as been informed of this in writing, and without prejudice to the obligation of the Contractor to comply with any assembly / installation obligations, and in compliance with the provisions of article 6 of the General Conditions.
- 5.4 Notwithstanding the other provisions of these Conditions related to an extension of the delivery time, the specified delivery time is extended by the duration of the delay on the side of the Contractor caused by failure by the Client to meet any of his contractual obligations.
- 5.5 Exceeding the delivery time does not entitle the Client full or partial dissolution or termination of the agreement, or not meeting an obligation of the Client as specified in these Terms and Conditions.
- 5.6 Exceeding the delivery time does not affect the obligations of the Client in these conditions, and other documents signed between the parties. The Contractor cannot be held responsible for delays in deliveries, or inability to deliver a whole Product or related parts, unless there is intent or deliberate recklessness on the part of the Contractor.

#### **6. Assembly / Installation**

- 6.1 If the parties have agreed that the Contractor will arrange assembly / installation of the product to be

delivered, the Client will owe the Contractor proper and timely implementation of all installations, facilities and / or conditions that are necessary for the preparation of the assembly / installation of the Product and / or the proper operation of the Product in the installed / uninstalled condition. This does not apply if and to the extent that performance is done by or on behalf of the Contractor in accordance with drawings and / or data produced or supplied by or on behalf of the latter.

- 6.2 Notwithstanding the provisions of paragraph 1 of this article, the Client will provide, if agreed by the parties that the Contractor arranges the assembly / installation of the product to be delivered, in any case his own expense and risk that:
- a. the employees of the Contractor can commence their work as soon as they arrive at the site of assembly / installation, and can continue to work during normal working hours and, if the contractor deems it necessary, outside normal working hours, provided that the parties have this agreed in writing;
  - b. the applicable government regulations / safety requirements are complied with, and the required facilities for the assembly / installation are present;
  - c. the access roads to the installation site are suitable for the required transport;
  - d. the designated installation site is suitable for storage and assembly / installation;
  - e. the necessary lockable storage sites for materials, tools and other goods are available;
  - f. the necessary and usual staff, auxiliary tools, and industrial materials (fuels, oils and greases, cleaning and other small materials, gas, water, electricity, steam, compressed air, heating, lighting, etc. included) and the standard measuring and testing equipment of the Company need to be available to the Contractor on time and free of charge at the right place.
  - h. at the start of and during the assembly / installation the shipped Products are available in the right place.
- 6.3 The (financial) consequences of the Client not meeting the conditions set out in paragraph 2 of this article, are entirely for the account and risk of the Client.

## **7. Inspection and acceptance tests**

- 7.1 The Client shall inspect the product within 14 days after delivery as referred to in Article 5, paragraph 3, respectively - if assembly / installation has been agreed - within 14 days after the assembly / installation. If this term is exceeded without written and specified notification of well-founded complaints, the product is deemed to be accepted.
- 7.2 If acceptance tests have been agreed on, the Client will give the Contractor the opportunity to carry out the necessary preparatory tests and make improvements and changes deemed necessary by the Contractor, after the delivery as referred to in Article 5, paragraph 3, or, if assembly / installation has been agreed on, after the assembly / installation. The acceptance tests will be held immediately after the request of the Contractor to do so in the presence of the Client. If the acceptance tests have been performed without specified and well-founded complaints, and if the Client does not meet said obligations, the Product shall be deemed to have been accepted.
- 7.3 For the acceptance tests and related tests, the Client will provide the necessary facilities, including those referred to in Article 6 paragraph 2 f., and representative samples of any materials to be processed in sufficient quantity, on time and free of charge at the right place, to the Contractor, so that the intended operating conditions of the Product can be simulated as closely as possible. If the Client does not meet these requirements, paragraph 2, last sentence, is applicable.
- 7.4 In case of minor shortcomings, especially those that hardly or not at all affect the anticipated use of the Product, the Product is deemed to be accepted, even despite these shortcomings. The Contractor shall nevertheless repair the defects as soon as possible.
- 7.5 Notwithstanding the warranty obligations of the Contractor, the acceptance according to the preceding paragraphs of this article excludes any claim for damages by the Client as a result of a failure of the

Contractor.

## **8. Risk and ownership**

- 8.1 The delivery as established in Article 4 paragraph 1 of these Terms and Conditions can be regarded as the time of transfer of risks. From the moment of delivery "ex works" as stated in Article 4 of these Terms and Conditions, the Client shall bear the risk for the Product, and the Client must keep the product adequately insured.
- 8.2 Notwithstanding the preceding paragraph and the provisions of art. 5 paragraph 3, the ownership of the Product is first transferred to the Client when all amounts due by the Client to the Contractor for deliveries or work, including interest and costs, are paid to the Contractor.
- 8.3 As long as the delivered product is the property of the Contractor, the Client shall not modify it in any way, alienate it, encumber it, or transfer it to a third party.
- 8.4 The Contractor is, in arising circumstances, entitled to unrestricted access to the Product. The Client shall provide the Contractor full cooperation to give the Contractor the opportunity to exercise his right of retention as stated in paragraph 2 by taking back the product, including any necessary disassembly.

## **9. Warranty**

- 9.1 Subject to the restrictions below, the Contractor guarantees the operation for the intended purpose of the Client under 'normal' use (within the meaning of Article 7:17 DCC) of the Product for a period of 12 months from the delivery under article 5, paragraph 3, with the exception of wear parts, including, but not limited to, membranes, and rubbers.
- 9.2 Paragraph 1 shall apply mutatis mutandis to unobservable defects at inspection or acceptance test that are caused solely or mainly by improper assembly / installation by the Contractor. If assembly / installation of the Product is done by the Contractor, the warranty period of 12 months in paragraph 1 shall commence on the day the assembly / installation is completed by the Contractor.
- 9.3 The defects covered by the warranty stated in paragraph 1 and paragraph 2 are remedied by the contractor by repairing or replacing the defective part (except the wear parts not covered by the warranty), whether or not at the company of the Contractor, or by sending a replacement part. For repaired or replaced parts, a new warranty period of 12 months will apply.
- 9.4 For repairs, overhauls and maintenance and similar services performed by the Contractor under the warranty, warranty is only provided on the soundness of the implementation of the assigned activities, for a period of 12 months. This warranty covers the obligation of the Contractor to perform the work again to the extent it has been performed unsoundly.
- 9.5 No warranty is given for inspections, advice and similar services performed or given by the Contractor.
- 9.6 The warranty does not cover defects that occur are wholly or partially the result of:
  - a. non-compliance with operation and maintenance instructions or other than anticipated normal use;
  - b. normal wear and tear;
  - c. the application of any government regulation regarding the nature or quality of the materials used;
  - d. materials or goods used in consultation with the Client;
  - e. materials or goods which have been supplied by the Client to the Contractor;
  - f. materials, goods, methods and constructions insofar applied at the explicit instruction of the Client, as well as materials and goods supplied by or on behalf of the Client;
- 9.7 If the Client does not properly or timely fulfil any obligation arising from this agreement or a related agreement, the Contractor is not held to any warranty relating to this agreement (s) - however called. If the Client proceeds to dismantle, repair or perform other work relating to the product without prior written approval of the Contractor, any claim under warranty is lost.
- 9.8 Complaints regarding defects should as soon as possible after discovery thereof but not later than 14 days following the discovery of the defect be reported to the Contractor in writing. Exceeding this period means

that any claim on the Contractor for such losses is lost. Legal actions must be brought within one year after the timely complaint under penalty of forfeiture.

- 9.9 If the Contractor in fulfilment of its warranty obligations replaces parts / Products, the replaced parts / Products will be owned by the Contractor.
- 9.10 The alleged non-compliance by the Contractor of its warranty obligations does not release the Client from the obligations arising from any agreement concluded with the Contractor.

## **10 Liability**

- 10.1 The Contractor is not liable for any (in)direct damage of the Client or third parties, including consequential damages. If upon delivery of the product an unlikely event occurs (including an omission) which leads to liability of the Contractor, in compliance with what is stipulated in paragraph 3 of this article, the liability will be limited to the amount paid out by the liability insurance of the Contractor in such case, including the deductible of the Contractor for such insurance. If and insofar no payment is made under the insurance policy for any reason whatsoever, any liability of the Contractor is limited to the fee charged to the Client by the Contractor in respect of the contract, with a maximum of the offered amount of the order that has led to the liability of the Contractor.
- 10.2 Claims for payment of damages shall expire one year after the day on which the Client became aware of the damage and the potential liability of the Contractor for that damage.
- 10.3 The Contractor is liable only if the Client suffers damage that is directly attributable to a culpable breach of contract by the Contractor, and there is intent or gross negligence on the part of the Contractor, and the Client also has not made any attributable faults with regards to the relevant incident.
- 10.4 The Client shall indemnify the Contractor against claims by third parties, who claim to have been harmed by or in connection with the Product supplied by the Contractor for Client, and against the cost of legal proceedings relating to any claim.
- 10.5 The Contractor is not liable for a breach of the agreement if this is due to force majeure. This also applies in cases of force majeure on the part of third parties engaged by the Contractor. In no event shall the Contractor be liable for indirect damage, including - but not limited to - loss of revenue. Force majeure in these terms and conditions shall mean any circumstance out of the control of the Contractor - even if it was already foreseen at the time of conclusion of the agreement - which prevents lasting fulfilment or temporary of the agreement, as well as, the extent not already included, war, threat of war, civil war, riots, strikes, lockouts, transport difficulties, fire, terrorism and other serious disruptions in the business of the Contractor or his suppliers.
- 10.6 Damage to property owned by the Client which are entrusted to the Contractor under the agreement shall be reimbursed only to a maximum of the offered amount of the order that led to the liability of the Contractor.
- 10.6 The Contractor expressly accepts no liability for damage resulting from, but not limited to:
  - a. damage or loss, for whatever reason, of parts, models, tools and other items made available by the Client;
  - b. inadequate cooperation, materials and / or incorrect or incomplete information provided by the Client;
  - c. conflicting third-party IP rights on the delivered Product and / or infringement of patents and / or industrial secrets;
  - d. legitimate exercise of retention, suspension and termination rights by the Contractor by law or these conditions or agreement.
- 10.7 If the Contractor provides assistance and help with assembly / installation without being granted the assembly / installation contract, this is done at the risk of the Client.
- 10.8 The Client shall indemnify the Contractor in respect of all third-party claims for compensation of damage.

## **11. Suspension and termination**

- 11.1 In case of inability to perform the contract due to force majeure on the side of the Contractor, the Contractor shall be entitled, without judicial intervention, to suspend the execution of the agreement for a maximum of 6 months, or to terminate the contract in whole or in part, without being obliged to pay any compensation.
- 11.2 If there are reasonable grounds to fear that the Client is unable or unwilling to fulfil its contractual obligations to the Contractor, and in case of bankruptcy, receivership, closure, liquidation or transfer all or part of the business of the Client, the Contractor is entitled to require adequate security of the Client for all (whether or not due and payable) contractual obligations of the Client, and pending such security, to suspend the execution of the agreement. In the absence of collateral within a reasonable period specified by the Contractor, the Contractor may terminate the contract in whole or in part. The Contractor has these rights in addition to its other rights under the law, the agreement and these Conditions.
- 11.3 If the Client does not timely or not properly fulfil any obligation for him under the agreement or arising from a related agreement, the Contractor shall also be entitled to suspend the execution of the agreement and / or terminate the agreement.
- 11.4 In case of suspension under paragraph 2 or 3, the Contractor shall be entitled store raw materials, materials, components and other items purchased, reserved, processed and manufactured by him for the implementation of the agreement at the expense and risk of the Client.  
In the event of termination under paragraph 2 or 3, the preceding sentence shall apply, except that the Contractor can also choose to sell or destroy at the expense of the Client, instead of a surcharge. In case of suspension or termination under paragraph 2 or 3, the Contractor is entitled to full compensation, but he himself is not bound to pay any compensation.

## **12. Applicable law and disputes**

- 12.1 All disputes arising from an agreement to which these Conditions fully or partially apply, or further agreements arising therefrom, shall be settled by the competent Dutch court. If the law does not provide for jurisdiction of a Dutch court, the court of the district of the Contractor shall have jurisdiction.
- 12.2 Dutch Law is applicable to all agreements to which these conditions fully or partially apply.
- 12.3 The applicability of the CISG is excluded.