

General Terms and Conditions of Delivery and Assembly of Electrical Engineering Companies



The following general terms have been translated from Dutch. In case of contradictions between the Dutch and the English texts, as well as between the interpretation of these two texts, the Dutch text of interpretation shall prevail over the English text or interpretation: only the Dutch version is definitive.

I GENERAL PROVISIONS

Applicability

- 1 These General Terms and Conditions apply to all obligations arising from the Agreement which contains these Terms and Conditions. The applicability of general terms and conditions relied upon by the Client is expressly rejected.

Definitions

- 2 In these Terms and Conditions, the term 'goods' is understood to mean: the engines, machinery, devices, panels, materials and products which are to be delivered by the Contractor under the Agreement. The term 'work' is understood to mean all activities (such as assembly, winding, reconditioning, balancing, repairs, maintenance, treating), which are to be carried out by the Contractor under the Agreement, as well as all 'goods' to be delivered.

II OFFER

- 3 Offers are free of obligations and are based on the work being carried out under normal circumstances and during the Contractor's normal working hours.
- 4 The weights, dimensions, capacities, prices, efficiency, and other information included in catalogues, prospectuses, circulars, advertisements, pictures and price lists serve as the most accurate indications possible.
- 5 Drawings, technical descriptions, designs and calculations prepared by the Contractor or on the Contractor's instructions remain the Contractor's (intellectual) property. They may not be made available or shown to third parties with the intention of obtaining a similar offer. Nor may they be copied or otherwise duplicated.
- 6 If the offer is not accepted, all documents referred to in the previous Article must be returned to the Contractor postage paid within fourteen days of the Contractor's request.
- 7 The Contractor will be entitled to charge the Client for the costs associated with the offer. Research expenses are always borne by the Client.

III CONCLUSION OF THE AGREEMENT

- 8 The Agreement will be deemed to have been concluded when, after receipt of an order, the Contractor:
 - either confirms his acceptance of the order in writing, within any time limit specified by the Client,
 - or starts to carry out the work.
- 9 If, when making an offer, the Contractor specifies a time limit for the acceptance of the offer, the Agreement will be deemed to have been concluded when the Client has accepted the offer in writing before this time limit has expired.
- 10 The Contractor cannot be obliged to start carrying out the work before he has all the information necessary to do so and has received the instalment or payment agreed upon.

IV PERFORMANCE OF THE AGREEMENT

Contractor's obligations

- 11 The Contractor is required to take out insurance against the risk of liability, in line with current practice in the electrical engineering sector. To this end, he will at least take out a companies' liability insurance policy with a sum insured of at least € 453,042.- per incident, with a series of connected incidents counting as one incident.
- 12 At the Client's request, the Contractor will provide the Client with documents evidencing the insurance he has taken out.
- 13 When carrying out the work, the Contractor will observe the regulations declared applicable to that work. Any financial consequences of changes in the regulations will be borne by the Client.
- 14 Where appropriate, the Agreement may contain provisions and conditions with regard to the provision of information by the Contractor to the Client's personnel who are responsible for activating the work and keeping it operational.

Client's obligations

- 15 The Client is required to enable the Contractor to carry out the work during the Contractor's normal working hours, and under conditions which meet the statutory safety requirements and other government regulations.
- 16 The Client must take possession of all goods which are to be delivered in accordance with the Agreement as soon as such goods are made available to him. If the Client fails to fulfil this obligation, the Contractor will be entitled to dissolve the Agreement.
- 17 The previous article applies mutatis mutandis to the Client's goods which are handed over to the Contractor for treatment, repair or inspection.
- 18 The Client is required to make tools, auxiliary materials, equipment, water and energy available on site, in time and free of charge, as stipulated in the Agreement.
- 19 The Client must ensure that activities and/or deliveries to be carried out by third parties, which do not form part of the Contractor's work, are carried out in such a way and at such time that the performance of the work is not delayed in any way. If a delay as referred to in this article nevertheless occurs, the Client must notify the Contractor immediately.
- 20 The Client will ensure the timely availability of adequate and safe equipment for moving any heavy parts required for the performance of the work in a horizontal or vertical direction, and ensure that the place where the work is to be carried out is accessible.
- 21 The Client will bear the risk for damage to and loss of materials, parts or tools which are supplied to the place where the work is carried out, if this damage or loss can be attributed to it. Loss of and/or damage to the goods referred to during the time that these are under the Client's supervision outside normal working hours will be at the Client's risk.

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- 22 The Client bears the risk of damage caused by defects in, or the unsuitability of, goods which are supplied by him or which are prescribed, or which must be procured from a prescribed supplier, as well as the risk of non-delivery or late delivery of such goods.
- 23 The Client bears the risk of damage caused by errors or defects in any drawings, calculations, designs, specifications or implementing regulations he provides.
- 24 The Client bears the risk of an improper performance of the Agreement by any auxiliary persons prescribed or made available by it.
- 25 The Client indemnifies the Contractor against all third-party claims for all damage for which the Client is liable under these Terms and Conditions, including claims resulting from infringements of intellectual or industrial property rights.

Activities not provided for in the Agreement

- 26 The Client is not entitled to have the auxiliary persons employed by the Contractor during the performance of the work carry out activities which are not connected to the work.

Additional work

- 27 Additional work is understood to mean everything that is supplied and/or applied or performed by the Contractor during the performance of the Agreement in consultation with the Client beyond the quantities or activities expressly set out in the Agreement or order confirmation.
- 28 The additional work is to be paid for in one lump sum when the next instalment is due. If no instalment was agreed upon, payment will be made in one lump sum after the additional work has been completed, within fourteen days after the Client is charged for it.
- 29 The lack of a written order for additional work does not affect the Contractor's right to payment for that work.

Checking and testing

Checking

- 30 If it has been expressly agreed upon, the Client will be entitled, both whilst the work is being carried out and after the work has been completed, to have someone check and verify the quality of the material and parts used. These checks and verifications will be carried out during normal working hours, after the day and time have been agreed with the Contractor in advance.
- 31 If, on the basis of these checks and verifications, the Client is of the opinion that certain materials or parts have defects or do not comply with the Agreement, he must state his objections in writing, including his reasons.

Testing

- 32 Unless agreed otherwise, tests (other than handover tests) provided for in the Agreement will be carried out during normal working hours. If the technical requirements for the tests are not specified in the Agreement, the tests will be carried out in accordance with common practice in the electrical engineering sector.
- 33 The Contractor will notify the Client in a timely manner in order to give the Client the opportunity to be present during the testing. If the Client decides not to be present, the Contractor will inform him of the result

of the testing, and the Client will not be entitled to dispute the accuracy of that result.

- 34 Unless agreed otherwise, all costs associated with testing carried out in the Contractor's workplace, with the exception of the Client's private expenses, are borne by the Contractor.

Handover tests

- 35 If so agreed, handover tests will be conducted. In that case, the Contractor will inform the Client in writing when the work is ready to be tested. The tests will be held in the presence of both parties, and will be carried out in accordance with the technical requirements specified in the Agreement, or in the absence thereof, in accordance with common practice in the electrical engineering sector.
- 36 If the tests show that the work is defective or that it does not comply with the Agreement, the Contractor will be required to remedy the defects or ensure that the work fulfils the requirements of the Agreement as quickly as possible and at his own expense. If the Client so wishes, the tests will be repeated at the Contractor's expense.
- 37 Notwithstanding the provisions of the previous Article, the Client will make available free of charge energy, water, fuel and all other material required for the final preliminary work and for the handover tests. For the activities referred to, the Client must also set up all necessary equipment free of charge.

Acceptance of the work

- 38 The agreed delivery period will be observed as far as possible, but will never constitute a deadline. If this delivery period is exceeded, the Contractor will consult with the Client.
- 39 If the start or progress of the work is delayed as a result of circumstances for which the Client is responsible, the damage arising for the Contractor as a result of this delay will be borne by the Client.
- 40 The delivery period will be adjusted in the cases referred to in Articles 19 and 47.
- 41 As soon as the work has been completed in the manner agreed upon and all handover tests have been passed, the Client will be deemed to have accepted the work, and the guarantee period will start.
- 42 If the Client is opposed to handover tests, the work will be deemed to have been accepted, and the guarantee period will start, after written notification to that effect from the Contractor.
- 43 Minor defects which can be remedied within the guarantee period and do not affect the performance of the work do not constitute valid grounds for rejecting the work.
- 44 Acceptance of the work will discharge the Contractor from all liability for defects which the Client should reasonably have discovered at that time. As a result of the acceptance, the risk associated with the work will pass from the Contractor to the Client.

Delivery conditions

- 45 The point at which the risk associated with the goods to be delivered passes will be determined in accordance with the International Chamber of Commerce Incoterms effective on the day on which the Agreement is concluded.

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ed. If the Agreement does not provide for the delivery conditions chosen, the goods will be deemed to have been sold 'ex works'.

46 In the event of the sale 'ex works':

- the Contractor must notify the Client in advance and in time where and when the goods will be made available to him;
- the Client must take possession of the goods as soon as they are made available to him;
- the Client will bear all risks of loss of or damage to the goods from the time that they are made available to him;
- the Client will conclude an agreement for the transport of the goods at his own expense and risk;
- the Client must pay the costs of an inspection prior to loading;
- the Client will bear the costs of packaging, unless agreed otherwise.

Force majeure

47 In the event of force majeure, the Contractor will be entitled, without judicial intervention, either to suspend fulfilment of his obligation for up to six months, or to dissolve the Agreement, without the Contractor being obliged to pay any compensation. All costs incurred by the Contractor up to that point will be fully and immediately exigible.

48 Force majeure is understood to refer to circumstances which the Contractor did not reasonably have to take into account, and of which he was unaware, at the time that the Agreement was concluded. The term is also understood to mean the Contractor's suppliers failing to fulfil their obligations, transport problems, fire, strikes or work stoppages, loss of the parts to be processed, import bans or trade bans.

Dissolution

49 Without prejudice to his other rights, the Contractor will be entitled, without judicial intervention and without notice of default, either to suspend fulfilment of his obligation or to dissolve the Agreement, if the Client:

- has applied for or has been granted a moratorium on payments;
- has been declared bankrupt or his bankruptcy has been petitioned for;
- fails to fulfil an obligation or the Contractor has reason to believe he will fail to do so.

Dissolution and suspension will take place by means of a written statement, without the Contractor being obliged to pay any compensation or provide any guarantee.

50 In these cases, all claims which the Contractor may have or acquire against the Client will be fully and immediately exigible.

V PAYMENT

Prices

51 If the Agreement does not contain any provisions on the subject, the prices stated will be exclusive of VAT and 'ex works', in accordance with the provisions of Articles 45 and 46. Cost increases resulting from changes in wages and prices are payable by the Client.

Packaging

52 Unless agreed otherwise, the prices stated in price lists, catalogues, the offer and the Agreement are exclusive of packaging or protection.

Payment

53 Payment is due at the time and in the manner agreed upon between the parties, without any right to discount or setoff.

54 If nothing has been agreed upon between the parties on this subject, payment will be due within thirty days of the invoice date.

Client in default

55 If payment has not been made on time, the Client will be in default and the Contractor will be entitled to suspend fulfilment of his obligation, without prejudice to his other rights.

56 Once the Client is in default, the Contractor will be entitled to collect the amount owed to him without further notice of default. All extrajudicial costs associated with this are payable by the Client, unless the Contractor chooses to fix these costs at 15% of the amount due.

57 During the time that the Client fails to pay, the Contractor will be entitled to charge interest on the amount owed to him. On an annual basis, this interest is equal to the statutory rate of interest plus 2%.

58 Payments made by the Client serve to settle firstly all costs and interest owed, and then the longest outstanding accounts, even if the Client states that a payment relates to later accounts.

Refusal to take possession

59 If the Client fails to take possession of the goods referred to in Article 17, the Contractor will be entitled to sell the goods in a suitable manner and to recover the amount owed to him from the proceeds, provided that the Contractor has demanded that the Client take possession of the goods within seven days.

60 If the Contractor wishes to proceed to sell the goods, he must, in so far as he is reasonably able to do so, notify the Client at least three days before the intended sale, stating the time and place.

61 After paying the costs of the sale, the Contractor will deduct from the net proceeds the amount owed to him under the Agreement.

62 The Contractor is entitled to settle the amounts he owes to the Client by means of setoff, even if this payment takes place during the Client's involuntary liquidation or moratorium.

Security

63 After the Agreement has been concluded, the Contractor will be entitled to require sufficient security from the Client, if he has reason to fear that the Client will not fulfil his payment obligation.

Retention of title

64 The Contractor remains the owner of all goods to be delivered as long as the Client has not fulfilled his payment obligations arising from this Agreement, including

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anything the Client might owe in connection with failing to fulfil his obligations.

VI GUARANTEE

- 65 Unless expressly agreed otherwise, the Contractor is obliged to fulfil his guarantee obligation only within the Netherlands.
- 66 Within the bounds of the following provisions, the Contractor undertakes, at his discretion, either to remedy defects which were already present at the time that the work was taken over, but which only became apparent within six months thereof, or to replace the work.
- 67 The obligation under Article 66 applies only to defects which were not reasonably observable at the time the work was accepted and which appear under normal operating conditions and during correct use of the work. It does not apply to defects arising after the work was accepted. In particular, it does not apply to defects resulting from inadequate maintenance by the Client, nor to changes made without the Contractor's written consent, or repairs carried out by the Client, or normal wear and tear, or defects for which the Client is liable under Articles 22 to 24 inclusive.
- 68 For specific parts of the work expressly listed, and in the case of more intensive use, the Agreement may, if necessary, provide for different guarantee periods.
- 69 In order to be able to invoke the rights arising from Article 66, the Client must:
- immediately notify the Contractor of the defects observed in writing;
 - demonstrate to the Contractor that the defects are attributable to the poor quality of the goods delivered or the defective performance of the work carried out, or - if and in so far as the design of the work originated from the Contractor - are the direct result of an imputable fault on the part of the Contractor;
 - assist the Contractor fully so as to enable him to remove the defects within a reasonable amount of time.
- 70 After receipt of the aforementioned notification, the Contractor will remedy the defects within a reasonable amount of time and at his own expense, subject to the provisions of the following article. Except when the nature of the defect is such that the repair is to be carried out on site, the Client will send each part displaying a defect that is covered by these guarantee provisions to the Contractor for repair or replacement. In that case, the Contractor will be deemed to have fulfilled his guarantee obligation with respect to the defective part referred to when the Contractor has made available the properly repaired part or a replacement part.
- 71 Unless agreed otherwise, the transport of the defective parts, the repaired parts and the replacement parts between the place of installation and the Contractor's workplace will at the Client's expense and risk if the Agreement was concluded 'ex works'.
- 72 The defective parts replaced by the Contractor in accordance with the guarantee obligation become his property.
- 73 If, in the Contractor's opinion, the costs of remedying the defects or providing a replacement are not in proportion to the Client's interest in a repair or replacement, the Client will have the right to compensation.

74 Contrary to the provisions of Article 66, the Contractor is entitled, where appropriate, either to fulfil the manufacturer's guarantee which is attached to the goods delivered or to take back the faulty goods and refund the purchase price. The provisions of Article 71 apply mutatis mutandis.

75 Without prejudice to the provisions of Article 70 and unless agreed otherwise, the costs associated with fulfilling the guarantee obligation will be borne by the Contractor, up to the amount of the agreed (purchase) price for the work.

VII CONTRACTOR'S LIABILITY

Prior to handover

- 76 At his own expense, the Contractor will make good loss of or damage to the work, which arises before the work is taken over, unless this loss or damage is not caused by the Contractor, or it is otherwise unreasonable that the Contractor bears this loss or damage.
- 77 The Contractor accepts liability for damage sustained by the Client to goods other than the work, in so far as this damage was caused by the performance of the work and is the result of a wrongful act on the part of the Contractor or the auxiliary persons employed by the Contractor, if and in so far as this liability is covered by his insurance.
- 78 The two preceding articles will apply mutatis mutandis if the Contractor carries out activities under his guarantee obligation as stipulated in Articles 65 to 75 inclusive.

After handover

- 79 After the work has been accepted, the Contractor will have no further liability for defects in the work, except to fulfil the guarantee obligation described in Articles 65 to 75 inclusive.
- 80 The Contractor will be liable only for damage sustained by the Client as a result of the defects referred to in Article 66, if and in so far as this liability is covered by his insurance.

Extent of compensation

- 81 If, pursuant to Articles 77 and 80, the Contractor is liable for compensating the Client for damage sustained, this compensation will not exceed the total of the excess under his insurance policy and the payment made under the insurance policy.
- 82 The Contractor will under no circumstances be liable for any damage sustained by the Client other than the damage referred to in the previous Articles.
- 83 The restrictions specified in the previous Articles will not apply if the damage is the result of gross negligence or wilful intent on the part of the Contractor or his managerial employees.
- 84 Every claim for compensation or for the making good of damage sustained before or after acceptance of the goods will lapse if this claim is not made known at the latest on the day on which the goods are accepted or on the day on which the guarantee period expires.
- 85 The Client's right of action against the Contractor for compensation or for a repair under these Terms and Conditions will be barred through the lapse of one year

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following the time that the Client protested in this matter.

VIII FINAL PROVISIONS

- 86 This agreement and any agreements arising therefrom are exclusively governed by Dutch law.
- 87 To the exclusion of the ordinary court, every dispute between the Contractor and the Client will be resolved by the Arbitration Board for the Metal Industry and Trade.
- 88 Contrary to the provisions of the previous article, the Contractor will be entitled to have the dispute resolved by the ordinary court, which, in the event that the district court is competent, means the district court in the town or district in which the Contractor is established.

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