

General Terms and Conditions of Sale and Delivery

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Art. I - General

1. When these terms and conditions are part of tenders and agreements concerning the performance of deliveries and/or services by the contractor, all clauses of these conditions shall be operative between the parties, insofar there has been no explicit amendment in writing by both parties. A referral by the client to its own purchase conditions or other conditions is explicitly refused by the contractor.
2. In these General Terms and Conditions the following definitions apply:
 - written: by means of a document, signed by both parties or a letter, telefax or e-mail message or any other technical manner agreed upon by parties;
 - the contractor: EromesMarko BV;
 - the client: the addressee of the tender and/or order confirmation;In these General Terms and Conditions the following definitions also apply:
 - service: contracting of work.

Art. II - Tender

1. Every tender made by the contractor is without obligations.
2. Every tender is based on execution of the agreement by the contractor under normal circumstances and during regular working hours.

Art. III - Agreement

1. If an agreement is entered into in writing, it is entered into on the day the contract is signed by the contractor or on the day of dispatch of the written confirmation by the contractor.
2. By additional work is meant everything the contractor, in consultation with the client, whether in writing or not, delivers and/or installs during the performance under the agreement exceeding the quantities explicitly laid down in the contract or in the order confirmation, or if the contractor performs more activities than explicitly laid down in the contract or order confirmation.
3. Verbal promises by and arrangements with staff members of the contractor shall not bind the contractor unless confirmed in writing by the contractor.

Art. IV - Price

1. The prices quoted by contractor are exclusive of VAT and any other sale and delivery-related government charges and are based on delivery ex works in accordance with Incoterms in effect on the date of offer, unless these Terms and Conditions provide otherwise. "Factory" is defined as the industrial site of the contractor.
2. If one or more elements of cost price are subject to an increase after the date of entering into the agreement - even if this occurs due to foreseeable circumstances - the contractor is entitled to increase the price agreed upon accordingly.
3. The agreement includes the authority of the contractor to separately invoice any additional work he has carried out, as soon as the amount to be charged is known. The provisions in paragraph 1 and paragraph 2 of this article shall apply accordingly to the calculation of additional work.
4. Cost estimates and plans are not invoiced separately, unless otherwise agreed upon. If the contractor should make new drawings, calculations, descriptions, models or tools, etc. for possible repeat orders, costs will be charged.
5. Packaging is not included in the price and will be invoiced separately. Packaging is not taken back.
6. The costs of loading, unloading and transportation of materials, semi-finished goods, models, tools and other items made available by the client are not included in the price and will be invoiced separately. Costs paid for by the contractor in this respect are regarded as an advance payment at the expense of the purchaser.
7. If the contractor has agreed to assemble/install a product, the price includes assembly/installation and ready-for-use delivery of the product at the address mentioned in the tender, as well as all costs, except for those costs which are not included in the price according to the preceding clauses or which are mentioned in article VII. Costs made due to weather conditions in which it is impossible to work will be charged.

8. For deliveries of less than € 1,500, excluding VAT, the contractor will charge the actual amount of delivery costs or, as the case may be, a fixed surcharge for delivery charges in the amount of 5% of the net order value excluding VAT with a minimum of € 15.

Art. V - Drawings, calculations, descriptions, models, tools and such; intellectual property

1. Information mentioned in catalogues, illustrations, drawings, measurement and weight specifications etc. will only be binding if and insofar as they are explicitly included in a contract signed by the parties or a confirmation of the order signed by the contractor.
2. The tender issued by the contractor, as well as drawings, calculations, software, descriptions, models, tools, etc. produced or provided by the contractor shall remain his property, even if costs have been charged in such respect. The intellectual property of the information contained within same or based upon methods of production and construction, products etc. shall remain exclusively reserved to the contractor, even if costs have been charged in such respect. The client guarantees that said information will not be copied, shown to third parties, made known or used, except as necessary to execute the agreement and with written permission of the contractor.

Art. VI - Delivery period

1. The delivery period shall commence on whichever of the following dates is the latest:
 - a. the day the agreement is entered into;
 - b. the day the contractor receives the documents, information, licences etc. necessary for performing the order;
 - c. the day the formalities required for commencing the work have been fulfilled;
 - d. the day the contractor receives the amount which should be paid in advance prior to the commencement of work.If a delivery date or week has been agreed upon, the delivery period will be the period between the conclusion of the agreement and, respectively, the delivery date or the end of the delivery week.
2. The delivery time is based on the working conditions applicable at the time that the agreement was concluded and on the timely delivery of the goods required by the contractor in connection with the execution of the work. If any delay might occur due to change in the said working conditions, for which change the contractor is not to blame, or because materials timely ordered for the execution of the work are not delivered on time, the delivery time will be prolonged for as long as necessary.
3. With regard to the term of delivery the product is deemed to be delivered when it is ready for testing, if testing in the premises of the contractor has been agreed upon, and in other cases when it is ready for shipment, all this after the client has been given notice in writing and without prejudice to the obligation of the contractor to fulfil possible assembly/installation obligations.
4. Without prejudice to any stipulations in these General Terms and Conditions regarding extension of the delivery time, the delivery time will be extended by the duration of the delay arising with the contractor as a result of the client's failure to fulfil any obligation ensuing from the agreement or failure to provide the assistance required of it regarding satisfying the terms of the agreement.
5. Delay in delivery shall not entitle the client to terminate the agreement completely or partly, unless such delay exceeds 16 weeks or the contractor indicates that the delay will exceed 16 weeks. In case of the latter delay or indication the client has the right to terminate the agreement in a written statement to the contractor, and he is then, insofar applicable, entitled to reimbursement of the part of the purchase price already paid for the delivered product and to compensation for the damage he has suffered up to a maximum of 15 per cent of the agreed purchase price for the delivered product. Unless the client exercises his aforementioned right to terminate the contract, delay in delivery -for whatever reason- shall not entitle the client to perform work or to have work performed under the agreement without the Court's leave.



Art. VII - Assembly/installation

1. If parties have agreed that the assembly/installation of the product to be delivered will be carried out by the contractor, the client is accountable to the contractor for the correct and timely execution of all constructions, facilities and/or conditions, which are necessary for the construction of the product to be assembled/installed and/or the proper functioning of the product in its assembled/installed state. This shall not apply if and insofar this performance is done or ordered by the contractor according to data and/or drawings made or presented by (order of) the latter.
2. Without prejudice to the provisions paragraph 1, the client shall, if parties have agreed that the contractor will assemble/install the product to be delivered, in any case see to it at his own expense and risk that:
 - a. the employees of the contractor can commence and continue their work during normal working hours from the moment they arrive at the place of assembly/installation and, moreover, if the contractor deems it necessary, outside of normal working hours provided that the client has been notified in time.
 - b. suitable accommodation and all provisions under Government ordinances, the agreement and common use will be available to the employees of the contractor;
 - c. the access roads to the place of installation is suitable for the required transportation;
 - d. the assigned place of installation is suitable for storage and assembly/installation;
 - e. the necessary lockable storage areas for material, tools and other goods are available;
 - f. the necessary and usual assistants, auxiliary tools, auxiliary industrial materials (fuels, oils and greases, cleaning and other small materials, gas, water, electricity, steam, compressed air, heating, lighting and such included) and the usual measuring and testing equipment of the company of the client are in the right place at the disposal of the contractor on time and free of charge;
 - g. all necessary safety and precautionary measures have been taken and shall be maintained, and that all measures have been taken and shall be maintained in order to comply with the appropriate Government regulations with respect to assembly/installation;
 - h. the delivered products are at the right place at the beginning of and during the assembly/installation.
3. Damage and costs resulting from the failure to fulfil any of the conditions stipulated in this article fully and on time shall be at the expense of the client.
4. With regard to time for the assembly/installation, article VI shall apply accordingly.

Art. VIII - Inspections and acceptance tests

1. The client shall inspect the product at the latest within 14 days after delivery as stated in article VI paragraph 3 or - if assembly/installation has been agreed upon - at the latest within 14 days after assembly/installation. If this term passes without written and specified notification of well-founded complaints, the product is assumed to have been accepted.
2. If acceptance tests have been agreed upon, the client shall, after delivery as stated in article VI paragraph 3 or, if assembly/installation has been agreed upon, after installation, give the contractor the opportunity to perform the necessary preparatory tests and to make any improvements and modifications which the contractor deems necessary. The acceptance tests shall be carried out immediately upon request of the contractor in the presence of the client. If the acceptance test have been carried out without specified and well-founded complaints, and when the client does not meet aforementioned obligations, the product is assumed to have been accepted.
3. The client shall put the facilities as specified in article VII paragraph 2 sub f. necessary for the acceptance tests and the related tests, as well as representative samples of materials to be processed in sufficient quantities, on time and free of charge on the right place at the disposal of the contractor in order to simulate the circumstances of use of the product as anticipated by the parties to the greatest extent possible. If the client fails to meet his obligations, paragraph 2, the last sentence is applicable.
4. In case of minor defects, especially those that will have little or no influence on the anticipated use of the product, the product will be assumed to have been accepted despite these defects. The contractor shall repair the defects as soon as possible.
5. Without prejudice to the guarantee obligations of the contractor the acceptance according to the preceding paragraphs will exclude any claim of the client for shortcomings in the performance of the contractor.

Art. IX - Transfer of risk and ownership

1. As soon as the the product has been delivered within the meaning of article VI paragraph 3, the client will bear the risk for all direct and indirect damage that may occur on or on account of this product, except insofar the damage is the result of the intent or conscious recklessness of members of the contractor's

management. If, after receiving a notice of default, the client does not take possession of the product, the contractor is entitled to charge the client with any resulting costs.

2. Without prejudice to the last paragraph and the provisions in article VI paragraph 3, the ownership of the product passes to the client only when the amount due to the contractor by the client for deliveries or work, including interest and costs has been paid in full.
3. Where appropriate, the contractor is entitled to unhindered access to the product. The client shall lend the contractor any cooperation required in the exercise of its retention of title pursuant to paragraph 2 by the recovery of the delivered goods, including any de-installation required for that purpose.

Art. X - Payment

1. In orders larger than € 25,000, payment of the agreed price will take place in 3 periods, unless otherwise agreed upon. 30% within 7 days after the conclusion of the agreement; 60% when the goods are ready for delivery and 10% no later than 30 days after delivery in accordance with article VI paragraph 3. In orders smaller than € 25,000 payment of the agreed price will take place no later than 30 days after delivery.
2. Payment of extra work must be made as soon as the client is billed.
3. All payments must be made without any deduction or setting-off by means to be determined by the contractor.
4. If the client does not pay within the agreed period, he is considered by right to be in default and the contractor is entitled to invoice, without any summons and as from the maturity date, interests at a percentage of 3 points above the legal interest rate in force in the Netherlands, as referred to in article 6:119a and article 6:120 paragraph 2 of the Dutch Civil Code (Burgerlijk Wetboek) as well as any judicial and extrajudicial costs relating to the collection of his claim.

Art. XI - Guarantee

1. Without prejudice to the following restrictions, the contractor guarantees the quality of the product he delivered as well as the quality of the materials used and/or delivered for the product, insofar deficiencies to the delivered product are concerned which cannot be detected at inspection or acceptance test respectively, of which the purchaser proves that these have arisen within 6 months after delivery under article VI paragraph 3 solely or mainly as a direct consequence of a defect in the construction applied by the contractor or due to inadequate workmanship or use of bad materials.
2. Paragraph 1 applies accordingly to defects which cannot be detected at inspection or acceptance tests respectively, caused solely or mainly by poor assembly/installation by the contractor. If the contractor performs the assembly/installation of the product, the term of guarantee of 6 months referred to in paragraph 1 goes into effect on the day the assembly/installation has been completed by the contractor, whereas in that case the term of guarantee ends in any case when 12 months after delivery in accordance with article VI paragraph 3 have passed.
3. The defects under the guarantee as referred to in paragraph 1 and 2 will be removed by the contractor by repair or replacement of the defective part, whether or not in the premises of the contractor or by mailing a part for replacement, this always at the contractor's discretion. All costs that go beyond the sole obligation as described in the preceding sentence, such as, but not restricted to, costs of transportation, costs of travelling and accommodation and costs of disassembly and assembly are at the expense of the client. A new guarantee period of 6 months shall apply for repaired parts and replaced parts. Any guarantee shall however expire as soon as 12 months have passed since delivery as referred to in article VI paragraph 3 or, when the provisions in paragraph 2 are applicable, as soon as 18 months have passed since such delivery.
4. With respect to repair, revision and maintenance work and similar services performed by the contractor outside any guarantee obligation and unless otherwise agreed upon, guarantee is only given on the soundness of the performance of the activities ordered, for a period of 6 months. This guarantee comprises the sole obligation for the contractor to, in case of defects, perform the activities in question again if they are deficient. The second full sentence of paragraph 3 applies accordingly. In that case a new guarantee period of 6 months shall apply, with the proviso that any guarantee will expire as soon as 12 months have passed since the original activities.
5. Inspections, consultations and similar services provided by the contractor are not covered by the guarantee.
6. The guarantee does not cover any damage occurring in whole or in part as a result of:
 - a. failure to follow operating or maintenance instructions or non-standard usage;
 - b. normal wear;
 - c. assembly/installation or repairs by the owner or third parties;
 - d. application of any government regulation regarding the nature or quality of the applied materials;



- e. materials or goods used in consultation with the client;
 - f. materials or goods provided by the client to the contractor for processing;
 - g. materials, goods, methods and constructions, insofar applied at the explicit instruction of the client, as well as materials and goods delivered by or on behalf of the client.
 - h. parts the contractor has received from third parties, insofar as the third party has not provided any guarantee to the contractor or the guarantee provided by the third party has expired.
7. If the client does not, does not adequately or does not timely meet with any obligation resulting from the agreement with the contractor or from a related agreement, the contractor is not held to any guarantee for any of these agreements. If the client proceeds to or has someone proceed to any disassembly, repair or other work concerning the product without prior written approval by the contractor, every guarantee claim will become void.
 8. Complaints arising from defects must be submitted in writing immediately after their discovery, and in any case within 14 days after expiration of the guarantee period. Exceeding these terms will result in expiration of every claim against the contractor relating to those defects. Possible legal actions must, under penalty of cancellation, be instituted latest one year after timely submission of a complaint.
 9. When the contractor replaces parts/products to fulfil his obligations under the guarantee, the replaced parts/products become property of the contractor.
 10. Alleged neglect in the part of the contractor to fulfil his obligations of guarantee does not relieve the client from the obligations resulting from any agreement entered into with the contractor.

Art. XII - Liability

1. The contractor's liability is limited to the fulfilment of the obligations of guarantee described in article XI of these terms and conditions. When the contractor has not fulfilled his obligations as referred to in article XI of these terms and conditions within a reasonable time frame, the client may, in writing, set a final, appropriate time for fulfilment of the contractor's obligations. When the contractor fails to fulfil his obligations within such final time, the client may himself undertake or employ a third party to undertake necessary repairs at the risk and expense of the contractor. Where successful remedial works have thus been undertaken by the client or a third party, reimbursement by the contractor of reasonable costs incurred by the client shall be in full settlement of the contractor's liabilities for the said defect, with the proviso that these costs will not amount to more than 15 per cent of the agreed purchase price for the delivered product.
2. When the defect has not been successfully remedied, as referred to in paragraph 1,
 - a) the client is entitled to a reduction of the agreed purchase price of the delivered product in proportion to the reduced value of the product, provided that this reduction shall not exceed 15 per cent of the agreed purchase price for the delivered product, or
 - b) where the defect is so substantial as to significantly deprive the client of the benefit of the contract, the client may terminate the contract by notice in writing to the contractor. The client is then entitled to reimbursement of the purchase price paid for the delivered product and to compensation for the damage he has suffered up to a maximum of 15 per cent of the agreed purchase price for the delivered product.
3. Save for intent or conscious recklessness of members of the contractor's management and except for the provisions in article VI paragraph 5 and paragraph 1 and 2 of the present article, all liability of the contractor for defects in the delivered product and in relation with the delivery, such as damage resulting from delay in delivery and non-delivery, damage as a result from liability towards third parties, for commercial damage, consequential and indirect damage and for damage as the result of any wrongful act or omission of (employees of) the contractor, is excluded.
4. Therefore the contractor is also not liable for:
 - infringement of patents, licenses or other rights from third parties;
 - damage or loss, from whatever cause, of raw materials, intermediates, models, tools and other goods made available by the client.
5. When the contractor provides help and assistance of any kind during the assembly/installation without being commissioned to do so, the risk incurred will be solely for the client.
6. The client is bound to indemnify and hold the contractor harmless with respect to all third-party claims for compensation for damages.

Art. XIII - Force Majeure

In these terms and conditions, "force majeure" will be taken to mean every circumstance independent of the contractor's intention -even if this could already be anticipated at the time the agreement was entered into- which may permanently or temporarily prevent performance of the agreement, and, insofar as not already included, war, danger of war, terrorism, civil war, riots, strikes, lock out, traffic disturbances, fire and other serious disruptions in the business of the contractor or his suppliers.

Art. XIV - Suspension and termination

1. If the contract cannot be performed on the grounds of force majeure, the contractor is entitled, without judicial intervention being required, either to suspend performance of the agreement for a period of no more than 6 months or to terminate the agreement partially or as a whole, without him being liable to pay any compensation. During the suspension the contractor is entitled, and at the end thereof it is obliged, to choose between execution, if possible, or full or partial dissolution of the agreement.
2. Both in the event of suspension and termination under paragraph 1, the contractor is entitled to require immediate payment for the raw materials, materials, parts and other items it has purchased, reserved, processed or manufactured for the performance of the agreement, for the value that can reasonably be assigned thereto. In the event of termination by virtue of paragraph 1 the client is obliged, after payment of the amount owed by virtue of the previous sentence, to take receipt of the items mentioned therein, failing which the contractor shall be entitled to have these items stored, sold or destroyed at the expense of the client.
3. If there is good reason to fear that the client is or will not be able or willing to fulfil his contractual obligations towards the contractor and in case of bankruptcy, suspension of payment, shutting down, liquidation or complete or partial transfer of the company of the client, the contractor has the right to require adequate securities for all contractual obligations of the client (whether due or not) and to suspend the performance of the agreement as long as such securities have not been provided. The contractor is entitled to rescind the agreement, in full or in part, should the client fail to provide such a security within a reasonable term set by the contractor. The contractor has these rights in addition to its other rights by virtue of the law, the agreement and these terms and conditions
4. If the client does not, does not adequately or does not timely fulfil any obligation resulting from the agreement with the contractor or from a related agreement, the contractor has the right again to suspend the performance of the agreement and/or to terminate the agreement.
5. In case of suspension as referred to in paragraph 3 or 4, the contractor is entitled to store the raw materials, materials, parts and other goods purchased, reserved, processed and produced for the performance of the agreement at the client's expense and risk. In case of termination as referred to in paragraph 3 or 4 the preceding full sentence is applicable accordingly, with the proviso that the contractor can also opt for sale or destruction at the expense of the client. The contractor is entitled to full compensation for damages in the event of suspension or rescission on grounds of paragraphs 3 or 4, without being obliged to pay compensation itself.

Art. XV - Disputes

All disputes that might arise as a result of an agreement to which these conditions apply completely or partly, or as a result of further agreements which are a consequence of such an agreement, shall be settled by the competent Dutch court or judge. If the law should not provide for a competent Dutch court or judge, the court in the court district of the contractor shall be competent in the dispute concerned.

Art. XVI - Applicable law

All agreements to which these terms are applicable in their entirety or in part shall be governed by Dutch law as it applies for the Kingdom in Europe. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG, Vienna Convention) is excluded.

