

General Terms and Conditions

Art.1 APPLICATION

1. Unless expressly agreed in writing, hereafter referred to as the "Seller", and a third party, hereafter referred to as the "Buyer", the stipulations contained in these general conditions apply to all quotations and offers made by the seller, the acceptance of these by the buyer as well as any agreement for sale, purchase or the supply of services concluded as a consequence hereof. By entering into an agreement with the seller, the buyer declares his awareness and acceptance of these general conditions, including eventual changes therein. Other (general) conditions of sale or purchase are expressly declared to be non-applicable to such agreements.
2. The nullity or void ability at law of one or more stipulations in these general conditions leaves the applicability of the other stipulations unimpeded.

Art.2 OFFER

1. Every quotation or offer made by the seller is without engagement, except when explicitly mentioned different in writing.

Art.3 AGREEMENT

1. The seller is only legally bound once the agreement has been confirmed by him in writing.
2. The agreement is concluded on the day on which the seller sends his written confirmation to the buyer or has dispatched the goods/merchandise.

Art.4 INTELLECTUAL PROPERTIES

1. Sketches, models etc. contained therein, as well as those in respect of the products supplied by the seller, are reserved to the seller. Should any action on the part of the buyer be required for these rights to be established, the buyer commits himself unconditionally to render his assistance. All above mentioned items remain the property of the seller, even if a charge has been made for them, and may not, wholly or partially, be copied, reproduced, supplied or lent to third parties by the buyer, without the seller's written consent.
2. The items mentioned in the previous paragraph must be returned by the buyer to the seller immediately upon the latter's request.

Art.5 PRICE

1. Unless otherwise agreed, and except in the case of quotations for ex-factory supply, the prices quoted by the seller include the cost of packaging, transport and delivery to the place indicated by the buyer within Holland for shipment with a net invoice value of € 450,00 (exclusive of VAT). For shipment with a net invoice value less than € 450,00 (exclusive of VAT) the transport costs will be charged to buyer.
2. Prices always exclude value added tax.
3. If, within three months of the conclusion of the agreement, but before the date of delivery, the seller alters the agreed price as a consequence of changes in one or more of the factors determining such price, whatever these may be, the buyer is authorized to cancel the agreement. If, after these three months have passed, but before the date of delivery, changes take place in the factors determining price, whatever these may be, the seller has the right to alter the agreed prices. Factors determining price will include, in all cases: raw material prices, component prices, wage and transport costs, foreign currency rates, import duties and taxes or other levies. The applicability of the provisions contained in Article 7A paragraph 1643 of the New Civil Code is expressly excluded.
4. The seller may impose a surcharge for supplies with an invoice value of less than € 227,00 (exclusive of VAT), even if the delivery is combined with that or other items.

Art.6 PAYMENT

1. Payment will be deemed to have been made when the amount in question has been fully received by the seller. The buyer is obliged to fulfil his obligation to pay within 10 days of the invoice date, in which case a possible credit surcharge, shown separately on the invoice, may be deducted. The buyer is not authorized to make any deductions from the price shown on the invoice to cover any counter-claim made by him on the seller.
2. Amounts which have not been settled within 10 days of the date of invoice will be subject to interest at the official interest rate (for commercial debts), from the date due until the date of full settlement has been received. This will be calculated per calendar month, or part thereof, for the amount outstanding, including interest due on this. Charging these expenses does not abrogate the obligation of immediate payment.
3. If the buyer neither settles his account on time, nor conforms to a subsequent notification of default within 10 days, the seller is authorized to regard the agreement as void, without recourse to legal action. In this case, the buyer is responsible for damage suffered by the seller, including, *inter alia*, loss of profit, transport costs and legal charges incurred as a result of the default. Furthermore, once the buyer has been declared to be in default, the seller is entitled to charge interest on the amount outstanding at a rate of one percent above the current official rate for the first calendar month or part thereof, at three percent above this rate for the second month and at five percent above the official rate for the third and subsequent months.
4. Should the seller take legal (or extra-judicial) action against the buyer, in the case of the latter's default, the cost of this is payable by the buyer. The (extra-) judicial damages payable will, in any case, amount to 15 percent of the principal, including VAT, with a minimum of € 113,00.
5. The seller is entitled to charge the buyer for the cost of storing goods ready for delivery if the latter does not take delivery on time, for whatever reason.
6. Every payment of outstanding invoices will be taken as payment towards the oldest outstanding account.

Art.7 TESTING

1. The seller will, before despatch, if agreed in writing, inspect and test the goods to be supplied. The buyer has the right to attend the tests and will be advised by the seller, in good time, that the goods are ready for testing. The seller will supply the buyer, at the latter's request, with a certified copy of the inspection and test reports. If the buyer wishes, and has indicated this to the seller in good time, these inspections and tests may be carried out by an independent research institution designated by the buyer and at the buyer's expense.

Art.8 SUPPLY

1. Unless otherwise agreed in writing, the time of delivery will be regarded as a prudent estimate. If delivery in a definite period of time has been agreed, this commences on the date upon which the seller confirms the agreement in writing, having received all information necessary for the performance of the agreement.
2. Delivery will be regarded as having been completed at the moment that the goods, or the most important part of them, have been delivered for testing to the buyer's factory site or to another location, if this is expressly determined in the agreement.
3. The fact that delivery is not made on time, for whatever reason, does not entitle the buyer to damages, suspension or annulment of the agreement, or to non-performance of any obligation on his part arising out of this or any other agreement made with the seller.

Art.9 TRANSFER OF TITLE AND LIABILITY

1. Except as provided in paragraph 2 of this article, the title to and liability for the goods will be transferred to the buyer on delivery, as described in article 8.
2. As long as the buyer has not either paid the full purchase price, including possible attendant expenses, for this or previous supplies, or given guarantees for such payment, the title to the goods remains with the seller. In this case, ownership of the goods is transferred to the buyer once he has met all his obligations to the seller.

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Art.10 NON-PERFORMANCE DUE TO *FORCE MAJEURE*

1. The time of delivery, as indicated in article 8, will be extended by the period during which the seller is prevented from carrying out his obligations by *force majeure*.
2. *Force majeure*, as far as the seller is concerned, applies when, after an agreement has been concluded, the seller is prevented from carrying out his obligations under this agreement by, *inter alia*: war, danger of war, civil war, commotion, molestation, fire, water damage, flooding, lock-outs, import and export restrictions, government measures, faulty machinery or disruption of energy supplies, etc. In all cases this applies both in respect to the seller's own company as to third parties from whom the seller needs to obtain raw materials or other supplies and also during storage and transport, whether under the seller's own management or not, and further under all other circumstances which occur outside the scope of the seller's blame or liability.
3. If delivery or the execution of work is delayed for more than two months due to *force majeure*, the buyer and seller are both entitled to regard the agreement as concluded, with neither party being liable to damages from the other.
4. If *force majeure* occurs when the agreement has been partially carried out, the buyer is, if the outstanding supplies are delayed by two months or more by *force majeure*, entitled to keep the goods already supplied and to pay only the amount due for these. Furthermore, the buyer is entitled to regard the agreement concerning the goods already delivered as void, in which case he is obliged to return these goods already supplied cannot be properly used by them as a result of the remaining goods not being delivered.

Art.11 DISSOLUTION

1. The buyer is in default at law if he is declared bankrupt or has been given a moratorium on payments, or if he has applied for these, or if he decides on, or actually carries out (partial) closing down or liquidation of his business, or if a substantial part of his capital is attached as a consequence of a claim on him. In such cases the seller is entitled, without there being a requirement for a summons or declaration of default being issued or court action being taken, to:
 - entirely or partially suspend the performance or fulfilment of one or more of his obligations arising out of the agreement(s) concluded with the buyer; and/or
 - to demand immediate payment from the buyer; and/or
 - to request payment in cash; and/or
 - to terminate the agreement(s) made with the buyer immediately, entirely or partially.
2. The stipulations in article 11, paragraph 1 do not curtail the rights of the seller to complete compensation for damage, interest and expenses.

Art.12 GUARANTEE

1. The seller guarantees the soundness of the goods which are to be supplied as according to the agreement, and that these goods comply in all respects with all appropriate requirements set out in applicable laws and/or other governmental regulations which are in force at the time the agreement was concluded.
2. The stipulations in paragraph 1 also apply to welding filler materials supplied by the seller, in which case the material supplied is also guaranteed, on delivery, to comply with the seller's specifications, taking into account the tolerances prevailing for such materials in the branch.
3. The guarantee mentioned in paragraph 1 does not apply to advice furnished by the seller concerning welding and cutting, the choice and use of welding filler materials and the use of machines and accessories.
4. The advice mentioned in paragraph 3 only indicates the possibilities available to the buyer or user. The practical application of information contained in such recommendations is entirely for the account and risk of the buyer or user.

Art.13 LIABILITY

1. The seller renders himself liable to the buyer solely for deficiencies in the goods supplied which manifest themselves within the guarantee period cited in the agreement, unless the damage is the result of the fact that the goods were used in disregard of the instructions supplied with them, or if other mistakes were made during use.
2. The seller's liability is restricted to the value of the faulty article supplied or to replacement of that article or part thereof.
3. The buyer will safeguard the seller against third party liability of any kind, for damage occurring which has not been caused by an action on the part of the seller.
4. Without prejudice to the stipulations of article 12, the seller cannot be accused of negligence in the case of previously supplied welding filler materials if welding technology or knowledge of the use of raw materials changes.
5. In accordance with the stipulations of article 12 paragraph 4, the seller is never liable for indirect or direct damage arising from his recommendations in any manner whatsoever, whether or not such advice was given against payment.

Art.14 APPLICABLE LAW

1. Offers, quotations and agreements to which these general conditions apply are subject to the Law of the Netherlands.

Art.15 DISPUTES

1. All disputes arising out of this agreement or from subsequent agreements affecting it, will be, with the exclusion of the usual power of the judiciary, settled by arbitration according to the regulations of the Netherlands Arbitration Institute.
2. A dispute will be held to exist if this has been notified in writing by one party to the other.
3. This arbitration clause does not exclude the entitlement of the parties to apply for a summary hearing at the Civil Court in urgent cases, and for them to engage in preventative legal action and to take the steps necessary for this to be effective.