

General Terms and Conditions of Delivery and Payment

Art. 1 APPLICABILITY

1. These General Terms and Conditions apply to all current and future quotations, offers and (repeating) agreements of purchase and sale and/or services of and with Katje Welding bv and its affiliated legal entities.
2. In these General Terms and Conditions, Katje Welding bv, or the legal entity affiliated to Katje Welding bv using these Terms and Conditions, is referred to as the seller. The other party is referred to as the buyer.
3. By entering into an agreement with the seller, the buyer declares to be familiar with and to agree to these General Terms and Conditions and any changes to them. (Standard) terms and conditions and stipulations used by the buyer are hereby rejected and set aside by the seller; these (standard) terms and conditions and stipulations do not apply, unless their applicability has been explicitly accepted by the seller in writing before or at the time of entering into the agreement.
4. If one or more provisions of these General Terms and Conditions are null and void or are annulled, the other provisions shall remain in full force and effect.

Art. 2 OFFER

1. Every quotation or offer made by the seller is without obligation unless explicitly stated otherwise in writing.
2. The contents of folders, websites, printed matter, etc. are not binding on the seller, unless the quotation, offer or agreement explicitly refers to them.

Art. 3 AGREEMENT

1. An agreement is only concluded after explicit acceptance by the seller.
2. The explicit acceptance as referred to in paragraph 1 is apparent from the seller's written confirmation or from the fact that the seller executes the agreement, for example by sending goods to be delivered on the basis of the agreement.
3. Agreements entered into with subordinate employees of the seller - i.e. employees without power of procuration - do not bind the seller, unless these have been confirmed in writing by the seller.

Art. 4 INTELLECTUAL PROPERTY RIGHTS

1. Unless expressly agreed otherwise in writing, the seller and/or any third party entitled retains the copyrights and all intellectual and industrial property rights to the quotations/offers and agreements made by the seller and to all illustrations, designs, drawings, sketches, models, software, etc. provided by the seller. If and insofar as any action by the buyer is required to establish these rights, the buyer undertakes to cooperate unconditionally. The aforementioned documents remain the property of the seller, even if costs have been charged for them, and may not be copied, multiplied, made available to third parties, made available for inspection or used in any other way by the buyer in whole or in part without the seller's express prior written consent. For each breach of this provision, the buyer will owe the seller an immediately due and payable fine of € 10,000.00.
2. The documents referred to in the previous paragraph must be returned to the seller on first request, at the latest after the expiry of the period given by the seller in this respect. In the event of a breach of this provision, the buyer will owe the seller an immediately due and payable fine of € 500.- per day.
3. The fines referred to in paragraphs 1 and 2 may be claimed by the seller in addition to damages by virtue of the law. The forfeiture of fines shall therefore not affect the right to claim damages.
4. The buyer indemnifies the seller against all claims from third parties and direct and indirect damage resulting from actions by the buyer in violation of the provisions of this Article.

Art. 5 PRICES

1. Unless another delivery condition is stated or agreed, the prices stated for delivery ex warehouse, exclusive of VAT, import and export duties and other government levies, now or later determined, shall apply.
2. The agreed prices are based on the costs applicable on the day of the quotation/offer. If after the conclusion of the agreement changes occur in one or more price-determining factors, the seller is entitled to pass these on to the buyer if, in the opinion of the seller, this can be considered fair. Price determining factors shall in any case include raw material prices, material, wage and transport costs, exchange rates, import and export duties and taxes or other levies.
3. The seller will inform the buyer of the price increase as soon as possible but no later than three working days before delivery. The price increase shall be explained in this notification.
4. If a price increase takes place within three months of the agreement being concluded, the buyer shall be entitled to dissolve the agreement. If the price increase takes place after these three months, the buyer is only entitled to dissolve the agreement if the price increase in relation to the price stated in the quotation/offer is 10% or more. The right to dissolve does not apply if the price changes are the result of government measures.
5. The buyer must notify the seller in writing of his/her intention to dissolve the agreement within three working days of notification of the price increase. In absence thereof, the agreement, including the price increase, will remain in force.
6. A dissolution due to a price increase does not entitle the buyer to compensation for any damage.

Art. 6 PAYMENT

1. Payment must be made no later than 30 days after the invoice date at the office of the seller or to a bank account number designated by the seller.
2. The invoice amounts owed shall be immediately due and payable upon expiry of the payment term of 30 days. From that moment of default until the day of payment in full, the buyer shall owe interest on the amount due and payable at the statutory commercial interest rate, increased by 2% surcharge.
3. The buyer shall not be entitled to deduct any amount from the price stated in the invoice or to suspend payment in whole or in part on account of a counterclaim. The buyer's right of set-off and/or suspension is excluded.
4. If the seller takes extrajudicial and/or judicial measures in the event of the buyer's breach of the agreement, including but not limited to the timely and full payment of (invoice) amounts to be paid, all costs thereof shall be borne by the buyer. The costs are payable by the buyer, in any case if the seller turns to a third party as a result of the buyer's default. The extrajudicial costs shall at least be set at the amounts resulting from the graduated scale pursuant to the law on extrajudicial collection costs and the associated decision. If the seller demonstrates that it actually incurred higher costs, which were reasonably necessary, all these costs are eligible for reimbursement.
5. The seller is entitled to demand sufficient security - for example in the form of a bank guarantee or deposit - before proceeding with (further) delivery, even if a credit has been stipulated. The seller may dissolve the agreement in writing or suspend its obligation to deliver if the buyer refuses to provide the required security in good time. This is without prejudice to the seller's right to compensation for related damage.
6. Any payment of a sum of money by the buyer will first serve to reduce costs, then to reduce the interest due and finally to reduce the principal sum (longest outstanding invoices first) and the current interest.

Art. 7 TESTING

1. Before shipment, the seller will, if agreed in writing, examine and test the goods to be delivered. In that case, the buyer has the right to attend the testing and will be informed in good time by the seller that the goods are ready for testing. The seller will provide the buyer, at his/her request, with a certified copy of its inspection and test reports. If the buyer so requires and has informed the seller of this in good time, this inspection and testing must be carried out at the buyer's expense by an Independent research institute to be specified by the buyer.

General Terms and Conditions of Delivery and Payment

Art. 8 DELIVERY AND RISK

1. Delivery shall take place ex warehouse, unless the parties agree otherwise.
2. If a delivery period has been agreed, it shall commence on the date on which the seller has confirmed the agreement in writing and has received all information necessary for the execution of the agreement.
3. The delivery periods are indicative and are considered to be a careful estimate. Exceeding the delivery time, for whatever reason, does not entitle the buyer to compensation, suspension or dissolution of the agreement, or to non-fulfilment of any obligation that may arise for him/her from this or any other agreement concluded with the seller.
4. If it is agreed that the seller will deliver the goods purchased to a destination designated by the buyer, all goods will be at the buyer's expense and risk from the moment of dispatch by/on behalf of the seller. The seller is not liable for damage related to the transport. The transport is at all times at the risk of the buyer. If desired, the buyer must insure him/herself against this risk.
5. The buyer is obliged to take the goods/services to be delivered by the seller at the time they are prepared for delivery or made available by the seller. If, for whatever reason, the buyer does not receive them, does not receive them on time or does not receive them in full, the goods will be stored at the expense and risk of the buyer. In that case, the buyer shall owe compensation for all related costs, including in any case the storage costs.
6. If the buyer fails to collect the goods thus stored (which have been made available by the seller) within one month at the latest against payment of all that is owed, the seller is entitled to sell the goods on behalf of the buyer (or have them sold) under the obligation to pay the proceeds to the buyer, after deduction of all claims to which the seller is entitled, including storage costs.

Art. 9 RETENTION OF TITLE

1. The seller retains title to the products delivered to the buyer now and in the future until all current and future claims against the buyer, for whatever reason, have been settled in full. Only after full payment thereof will the ownership of the goods pass to the buyer.
2. The buyer is obliged to store the goods delivered subject to retention of title as the seller's recognisable property and with due care.
3. If the buyer fails to fulfil his/her (payment) obligations arising from the seller's claims - including claims relating to earlier deliveries, fines, interest and costs - in a timely and complete manner or if there is a well-founded fear that he/she will not do so, the seller is irrevocably entitled and authorised to take back the delivered goods (or have them taken back) without notice of default and/or judicial intervention being required. If necessary, the buyer will cooperate fully.
4. As long as the ownership of the delivered goods has not been transferred to the buyer, the buyer may not pledge them or grant third parties any other right to them.
5. If third parties wish to establish or assert any right to the goods delivered subject to retention of title, the buyer shall inform the seller of this as soon as possible. The buyer undertakes to cooperate within reasonable limits with all measures that the seller would then like to take to protect its right of ownership.

Art. 10 FORCE MAJEURE

1. The seller is not liable for non-performance as a result of force majeure. Force majeure shall be understood to mean any circumstance or event beyond the seller's control and as a result of which the seller cannot reasonably be expected to fulfil its obligations, including in any case war, mobilisation, unrest, natural disasters or extreme weather conditions, transport obstructions, stagnation and/or limitation and/or discontinuation of delivery by utility companies, machine breakdowns and other calamities, strikes, lockouts, trade union actions, export restrictions, other measures taken by the government, non-delivery (on time) of the necessary raw materials, materials and/or semi-finished products by third parties, intent or gross negligence on the part of auxiliary persons, as well as other similar circumstances independent of the seller's will, including force majeure on the part of the seller's suppliers.
2. In the event of force majeure, (further) fulfilment of the seller's obligations cannot reasonably be required. The seller will then be entitled to suspend the execution of the agreement.
3. If the delivery or the execution of the work is delayed by more than two months due to force majeure, both the seller and the buyer are entitled to dissolve the agreement without judicial intervention, without either party being liable to pay damages to the other party.
4. If the force majeure occurs while the agreement has already been partially executed, the seller is entitled to invoice the part already delivered or deliverable separately. The buyer is then obliged to pay this invoice as if it were a separate agreement, unless the buyer invokes it in a reasoned manner and demonstrates that the part already delivered, or deliverable has no independent value. In the latter case, the buyer is not obliged (after dissolution) to pay for the goods already delivered to him, but must return them to the seller (or have them returned) within a reasonable period and in good condition.

Art. 11 DISSOLUTION

1. The buyer is in default by operation of law if he/she is declared bankrupt, or if he/she is granted a suspension of payment, or in the event of a request to that effect, or if he/she decides or proceeds to (partial) shutdown or liquidation of his/her company, or if one or more of his/her assets are seized at his/her expense. In that case, the seller is entitled, without any summons or notice of default or judicial intervention being required:
 - to suspend, in whole or in part, the performance or execution of one or more of its obligations under the agreement(s) concluded with the buyer;
 - and/or to immediately demand payments to be made by the buyer;
 - and/or to require cash payment;
 - to dissolve all or part of the agreement(s) concluded with the buyer with immediate effect.
2. The provisions of paragraph 1 do not affect the seller's right to full compensation for damage, interest and costs.

Art. 12 GUARANTEE

1. The seller guarantees that the goods (a) are free of defects for one year after delivery, which means that they do not contain any material or production defects, (b) comply with the regulations issued by the Dutch government in this respect that are in force at the time of the conclusion of the agreement, and (c) comply with the specifications as stated by the seller, with due observance of the tolerances that apply to such materials in the sector.
2. The guarantee referred to in paragraph 1 does not relate to advice given by the seller relating to welding and/or cutting, the processing and selection of welding consumables and the use of machines and accessories. The buyer cannot derive any rights from this. The advice only indicates which possibilities the buyer and/or user have. The practical application of the information provided in these recommendations is entirely at the expense and risk of the buyer and/or user.
3. In order to claim under the guarantee, the buyer will inform the seller immediately and before the end of the guarantee period of any alleged defects. In the event that the seller establishes that the guarantee claim is valid, the seller will either repair defective goods - the buyer must always give the seller the opportunity to do so - or offer a replacement product within a reasonable period and at its own discretion. In the event of repair or replacement of defective (parts of) goods, the buyer shall bear the costs of dismantling and assembly thereof.
4. If, despite reasonable efforts, the seller is unable to repair or replace a defective good, the seller shall offer the buyer appropriate compensation or refund the purchase price.
5. Defects caused by normal wear and tear, improper handling or use, injudicious or incorrect maintenance, or which occur after modification or repair by or on behalf of the buyer him/herself or by third parties, fall outside the guarantee.
6. Unless otherwise agreed, the guarantee conditions set by the factory shall apply to goods delivered in deviation from the above. If the factory does not provide a guarantee, the seller will not provide a guarantee either.
7. The guarantee only applies if the buyer has fulfilled all his/her obligations towards the seller (both financially and otherwise) or has provided sufficient security for this.

Art. 13 COMPLAINTS

1. The buyer will check the goods on or immediately after delivery for correctness, quantity and quality.
2. The visible defects of the goods that were found or could reasonably be found during the inspection must be reported to the seller immediately, but no later than eight days after delivery, in writing or by telephone (with written confirmation), stating the order number, waybill, invoice, etc.
3. The invisible (hidden) defects must be reported to the seller immediately but no later than eight days after discovery or after they could reasonably have been discovered, but in no case later than two months after delivery, in the manner referred to in paragraph 2.
4. Complaints about invoices sent by the seller must be submitted in writing within eight days of receipt of the invoice.
5. The buyer loses all rights and powers that were at his/her disposal on the grounds of inaccuracy or defectiveness if he/she has not complained within the periods specified in this Article and/or he/she has not given the seller the opportunity to investigate or repair the defects.

General Terms and Conditions of Delivery and Payment

Art. 14 LIABILITY

1. The seller is only liable for damage suffered by the buyer, which is the direct and exclusive result of a shortcoming attributable to the seller, on the understanding that only damage against which the seller is insured is eligible for compensation, or should reasonably have been insured in view of the customs applicable in the sector. The following limitations must be observed:
 - (i) Damage to business and/or consequential loss (business interruption, expenses, loss of income, lost savings, reputational damage, loss of goodwill, etc.) for whatever reason is not eligible for compensation. If desired, the buyer must take out insurance against this damage.
 - (ii) The seller is not liable for any damage caused by or during the installation of delivered goods to goods on which work is being carried out or to goods and/or persons in the vicinity of the place where work is being carried out, except and insofar as the seller is insured for this.
 - (iii) The seller is not liable for damage caused by intent or gross negligence on the part of auxiliary persons.
 - (iv) The seller is not responsible for damage caused by:
 - incorrect observance of the (operating) instructions;
 - incorrect use of the delivered goods or use for a purpose for which the goods are not suitable.
 - (v) The damage to be compensated by the seller shall at all times be limited to a maximum amount equal to the invoice amount in respect of the goods or services delivered or work performed by the seller to which the liability relates.
2. The buyer is liable for all damage as a result of theft, fire or damage to the goods, tools and materials of the seller as soon as they are on the buyer's premises, insofar as this cannot be attributed to a shortcoming on the part of the seller.
3. From the moment of delivery of the goods, the seller is indemnified by the buyer against all claims of third parties, including payment of damages, regardless of whether the damage has arisen as a result of the composition and/or manufacturing faults or by any other cause.
4. In accordance with the provisions of Article 12, paragraph 2, the seller shall never be liable for direct or indirect damage resulting from advice given by the seller in any form whatsoever, and regardless of whether or not it was given against payment.

Art. 15 EXPORT

1. Any delivery by the seller is subject to the condition that the buyer does not export, transit or otherwise use and/or transfer the goods in violation of any national or international export and import control laws and regulations that prohibit, sanction or restrict the (re-)export or transfer of certain items to certain countries, entities or persons, such as UN, EU and US laws and regulations ("Export Regulations").
2. The buyer guarantees the seller that he/she (a) is not him/herself the subject of any national or international embargo/sanction measure, and (b) will comply with the aforementioned "Export Regulations" when (re-)exporting and/or transiting goods supplied by the seller.
3. The buyer indemnifies the seller against all claims from third parties and direct and indirect damage - including fines, (subsequent) levies etc., imposed by governments, agencies and/or institutions - which is the result of actions by the buyer in violation of the provisions of this Article.

Art. 16 APPLICABLE LAW

1. Dutch law shall apply to quotations, offers made and agreements to which these General Terms and Conditions apply.
2. The applicability of the Vienna Sales Convention is excluded, as is that of any future international regulation on the purchase of movable property whose effect can be excluded by the parties.

Art. 17 DISPUTES

1. All disputes arising from this agreement or from further agreements for its implementation shall be settled by means of arbitration in accordance with the Regulations of the Netherlands Arbitration Institute.
2. However, the parties are always (also) entitled to submit a dispute to the civil court of the District Court of Noord-Nederland, at the Leeuwarden location. In addition to the Netherlands Arbitration Institute, this court has exclusive jurisdiction.