

General Conditions of Sale, Supply and Service

Machinefabriek & Apparatenbouw Geha b.v.

Preamble

1. These General Conditions apply unless deviations or modifications thereof are expressly agreed between the parties in writing.

The object(s) or service(s) to be supplied under these General Conditions is (are) hereinafter referred to as the Product. Whenever these General Conditions use the term

- “in writing”, this shall mean by document signed by the parties, or by letter, fax, electronic mail and by such other means as agreed by the parties
- “Supplier” shall mean he who refers to these General Conditions in his quotations and/or order acknowledgements
- “Purchaser” shall mean he to whom the quotation and/or order acknowledgement is addressed

Quotations and Prices

2. Quotations are valid for a period of 3 months, unless otherwise specified. A verbal modification of a quotation is valid only if confirmed in writing.
3. Additional work and material, resulting from a change in specification by Purchaser, will be subject of an additional quotation by Supplier, and will be invoiced as per Clause 20. Performance in accordance with the changed specification will be undertaken following receipt of Purchaser’s written acceptance of the revised pricing.
4. The cost of packaging will be invoiced separately. Packaging is non-returnable. Handling and transport of goods supplied by Purchaser for use in/with Product is subject of a separate charge.
5. Quotations and contract prices for installation work on site of Purchaser or his customer are based on normal working conditions. Incremental costs due to delays not attributable to actions of Supplier’s personnel, such as omissions or acts by third parties, abnormal site conditions, or inclement weather, will be substantiated by Supplier and are for Purchaser’s account.

Contract

6. Contractual obligations exist as soon as Seller has signed and forwarded to Purchaser a written order acknowledgement. Changes to contractual obligations, except for those named in these General Conditions, require written confirmation.

Drawings and Descriptions

7. Purchaser shall receive drawings for approval when product design is based on Purchaser’s specification.
8. All drawings and technical documents relating to Product or its manufacture, including the intellectual property on the information contained therein, submitted by one party to the other, prior or subsequent to the formation of the contract, shall remain the property of the submitting party. Drawings, technical documents or other technical information received by one party shall not, without consent of the other party, be used for any purpose other than that for which they were provided. They may not, without the written consent of the submitting party, otherwise be used, copied, reproduced, transmitted or communicated to a third party.
9. Supplier shall, not later than at the date of delivery, provide free of charge information and drawings which are necessary to permit Purchaser to erect, commission, operate and maintain Product. Supplier shall not be obliged to provide manufacturing drawings for Product or for spare parts.

Acceptance Tests

10. Acceptance tests provided for in the contract shall, unless otherwise agreed, be carried out at Supplier’s location during normal working hours. If the contract does not specify the technical requirements, the tests shall be carried out in accordance with the general practice of industry.
11. Supplier shall notify Purchaser in writing of the timing of acceptance tests in sufficient time for Purchaser to be present at the tests. If Purchaser is not represented, the test report shall be sent to Purchaser and shall be accepted as accurate.

12. If the acceptance tests show Product not to be in accordance with the contract and such failure is not attributable to material or parts delivered by Purchaser, Supplier shall without delay remedy any deficiency in order to ensure that Product complies with the contract. Any difference between drawings or technical information and actual Product that have no bearing on the functionality of Product, will not be considered a non-conformity. Remedy on, or due to, material or parts delivered by Purchaser are for Purchaser's account.
13. Supplier shall bear all costs for acceptance tests carried out at Supplier's location. Purchaser shall bear all travelling and living expenses of his representatives in connection with such tests.

Delivery and Passing of Risk

14. If no trade term is specifically agreed, the delivery shall be FCA Supplier's facilities in Nieuw-Amsterdam, The Netherlands (Incoterms 2011). If, in the case of delivery FCA, Supplier at the request of Purchaser undertakes to send Product to its destination, the risk will pass no later than when Product is handed over to the first carrier. Partial shipments shall be permitted unless otherwise specified.
15. Material or parts delivered by Purchaser for use in or assembly with Product shall be stored on Supplier's grounds at Purchaser's risk.

Time for Delivery and Delay

16. Delivery lead time will start to run as soon as the contract is entered into, all official formalities have been completed, any agreed securities have been given, all documentation and information is received, and any other preconditions have been fulfilled.
17. For purpose of delivery, Product is considered delivered when Supplier advises Purchaser that Product is ready for shipping, or ready for acceptance tests.
18. If Supplier anticipates that he will not be able to deliver Product or a part thereof at the agreed time for delivery, he shall forthwith notify Purchaser thereof, stating the reason and, if possible, the time when delivery can be expected. Failure by Supplier to give such notice entitles Purchaser to compensation for any additional cost which he incurs and which he could have avoided had he received such notice.
19. If delay in delivery is caused by any of the circumstances mentioned in Clause 45 or by any act of omission by Purchaser, including suspension under Clauses 26 and 48, the time for delivery shall be extended by a period which is reasonable having regard to all the circumstances in the case. This provision applies regardless of whether the reason for delay occurs before or after the agreed time for delivery.
20. If Product is not delivered at the time for delivery (as defined in Clauses 17 and 19), Purchaser is entitled to liquidated damages from the date on which delivery should have taken place. The liquidated damages shall be payable at a rate of 0,35 % of the purchase price for each completed week of delay, but shall not exceed 5 % of the purchase price. The liquidated damages become due at Purchaser's demand in writing, but not before delivery has been completed or the contract is terminated under Clause 21. The right to liquidated damages is forfeited if Purchaser has not claimed such damages in writing within 1 month after the time when delivery should have taken place.
21. If the delay in delivery is such that Purchaser is entitled to maximum liquidated damages under Clause 20 and Product is still not delivered, Purchaser may in writing demand delivery within a final reasonable period. If Supplier does not deliver within such final period and this is not due to any circumstance for which Purchaser is responsible, then Purchaser may by notice in writing to Supplier terminate the contract in respect of such part of Product as cannot be used as intended due to Supplier's failure to deliver. If Purchaser terminates the contract he shall be entitled to compensation for the loss he has suffered as a result of Supplier's delay. The total compensation, including liquidated damages which are payable under Clause 20, shall not exceed the incremental cost incurred by Purchaser as a result of having to procure elsewhere the part of Product in respect of which the contract is terminated. Purchaser shall also have the right to terminate the contract by notice in writing to Supplier, if it is clear from the circumstances that a delay in delivery will occur which under Clause 20 would entitle Purchaser to maximum liquidated damages. In case of termination on this ground, Purchaser shall be entitled to compensation as per Clause 20.
22. Liquidated damages under Clause 20 and termination of the contract under Clause 21 are the only remedies available to Purchaser in case of delay on the part of Supplier. All other claims against Supplier based on such delay shall be excluded, except where Supplier has been guilty of gross negligence. In these General Conditions gross negligence shall mean an act or omission implying either a failure to pay due regard to serious consequences,

which a conscientious supplier would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission.

23. If Purchaser anticipates that he will not be able to accept delivery of Product at the agreed time for delivery, he shall forthwith notify Seller thereof in writing, stating the reason and, if possible, the time when he will be able to accept delivery. If Purchaser fails to accept delivery at the delivery time, he shall nevertheless pay the purchase price as if delivery had taken place. Supplier shall arrange for storage of Product at the risk of Purchaser. If the period of storage exceeds a period of 3 months, the cost of storage are for Purchaser's account. Supplier shall, if Purchaser so requires, insure Product at Purchaser's expense.

Payment

24. Unless otherwise agreed, the purchase price shall be invoiced with one third at the formation of the contract and two thirds when Supplier notifies Purchaser that Product, or a part thereof, is ready for delivery. Payment shall be made without deduction within 30 days of the date of the invoice. Payment shall be deemed to have been effected when Supplier's bank account has been fully and irrevocably credited.
25. If Purchaser fails to pay by the stipulated date, Supplier shall be entitled to interest from the day on which payment was due. The rate of interest shall be in accordance with the European Directive on late payment in commercial transactions, that being 8 % plus the European Central Bank reference rate.
26. In case of late payment Supplier may, after having notified Purchaser in writing, suspend his performance of the contract until he receives payment.
27. If Purchaser has not paid the amount due within three months, Supplier shall be entitled to terminate the contract by notice in writing to Purchaser, and to claim compensation for loss he has incurred. Costs related to collection of overdue amounts through third party involvement are for account of Purchaser.

Retention of Title

28. Product shall remain the property of Supplier until paid for in full, including interest and costs per clause 25 and 27. Retention of title shall not affect the passing of risk under clause 14. Purchaser shall at the request of Supplier assist him in taking any measures necessary to protect Supplier's title to Product, including repossession and disassembly if so deemed necessary by Supplier.

Guarantee and Liability for Defects

29. Pursuant to the provisions of Clauses 30 to 43 inclusive, Supplier shall remedy any defect or nonconformity (hereinafter termed defect(s)) resulting from faulty materials or workmanship as well as defects due to deviations from approved designs.
30. Supplier's liability is limited to defects on Product which appear within a period of 24 months of use, but not more than 30 months from delivery. However, in case of poor installation work performed by Supplier on Purchaser's site or on the site of Purchaser's customer, Supplier's liability is limited to a period of 6 months after commissioning, but no more than 12 months after completion of the installation work performed.
31. When a defect in a part of Product has been remedied, Supplier shall be liable for defects in the repaired or replaced part under the same terms and conditions as those applicable to the original Product for a period of 24 months. For the remaining parts of Product the period mentioned in Clause 30 shall be extended only by a period equal to the period during which Product has been out of operation as a result of the defect.
32. Purchaser shall without undue delay notify Supplier in writing of any defect which appears during the period stated in Clause 30. The notice shall contain a description of the defect. If Purchaser fails to so notify Supplier, he loses his right to have the defect remedied. Where the defect is such that it may cause damage, Purchaser shall immediately inform Supplier in writing. Purchaser shall bear the risk of damage resulting from his failure to so notify.
33. Upon receipt of the notice under Clause 32 Supplier shall remedy the defect without undue delay and at his own cost as stipulated in Clauses 30 to 43 inclusive. Repair shall be carried out at the place where Product is located unless Supplier deems it appropriate that the defective part of Product is returned to him for repair or replacement. Supplier is obliged to carry out dismantling and re-installation of the part if this requires special knowledge. If such special knowledge is not required, Supplier has fulfilled his obligations in respect of the defect when he delivers to Purchaser a duly repaired or replaced part.
34. If Purchaser has given notice as per Clause 32 and no defect is found for which Supplier is liable, Supplier shall be entitled to compensation for the costs he has incurred as a result of the notice

35. Purchaser shall at his own expense arrange for any dismantling and reassembly of equipment other than Product to the extent that it is necessary to remedy the defect.
36. Transport of Product or parts thereof to and from Supplier in connection with remedying of the defect for which Supplier is liable, shall be at the risk and expense of Supplier. Purchaser shall follow Supplier's instructions regarding such transport. Purchaser shall bear any additional costs which Supplier incurs for repair, dismantling, installation and transport as a result of Product being located in a place other than the place of delivery.
37. Defective parts which have been replaced are Supplier's property, and shall - on request - be made available to him.
38. If Supplier does not fulfil his obligations under Clause 33 within a reasonable time, Purchaser may fix by notice in writing a final time for completion of Supplier's obligations. If Supplier fails to fulfil his obligations within such final time, Purchaser may himself undertake or have a third party undertake necessary remedial work at the risk and expense of Supplier. Where successful remedial works have been undertaken by Purchaser or a third party, reimbursement by Supplier of reasonable costs incurred by Purchaser shall be in full settlement of Supplier's liability for said defect.
39. Where the defect has not been successfully remedied as stipulated in Clause 38, and the defect is so substantial as to significantly deprive Purchaser of the benefit of the contract, Purchaser may terminate the contract by notice in writing. Purchaser is then entitled to compensation for the cost incurred as a result of having to procure elsewhere, up to a maximum of 15 percent of the purchase price.
40. Supplier is not liable for defects arising out of a design or materials provided by Purchaser, or out of dismantling of Product performed by Purchaser without the express written consent from Supplier.
41. Supplier is liable only for defects which appear under the conditions of operation provided for in the contract and under proper use of Product. Supplier's liability does not cover defects which are caused by faulty maintenance or use, incorrect erection or faulty repair by Purchaser or Purchaser's customer, or by alterations carried out without Suppliers written consent, nor does it cover normal wear and tear.
42. Notwithstanding the provisions of Clauses 29 to 41, Supplier shall not be liable for defects in any part of Product for more than the period given in Clause 30 and 31
43. Save as stipulated in Clauses 29 to 42, Supplier shall not be liable for defects, nor for any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation to Supplier's liability shall not apply if he has been guilty of gross negligence as defined in Clause 22.

Allocation of Liability for Damage caused by Product

44. Supplier shall not be liable for any damage to property caused by Product after it has been delivered and whilst it is in the possession of Purchaser, nor shall he be liable for any damage to products manufactured by Purchaser, or products of which Purchaser's products form part. If Supplier incurs liability towards any third party for such damage to property as described in the preceding paragraph, Purchaser shall indemnify, defend and hold Supplier harmless. If a claim for damage as described in this Clause is lodged by a third party against one of the parties, that party shall forthwith inform the other party in writing. Supplier and Purchaser shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damages lodged against one of them on the basis of damage allegedly caused by Product. The limitation to liability expressed in the first sentence of this Clause shall not apply where Supplier has been guilty of gross negligence as defined in Clause 22.

Force Majeure

45. Either party shall be entitled to suspend performance of his obligations under the contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: industrial disputes and any other circumstance beyond the control of the parties such as fire, war, extensive military mobilisation, insurrection, embargo, restriction in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstance referred to in this Clause. A circumstance referred to in this Clause whether occurring prior to or after the formation of the contract shall give right to suspension only if its effect on the performance of the contract could not be foreseen at the time of the formation of the contract.
46. The party claiming to be effected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If Force Majeure prevents Purchaser from fulfilling his obligations, he shall compensate Supplier for expenses incurred in securing and protecting Product in an amount considered reasonable under the circumstances.

47. Regardless of what might otherwise follow from these General Conditions, either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is suspended under Clause 45 for more than 6 months. In such case Purchaser shall then accept delivery of (partially completed) Product, failing which Supplier may sell or otherwise dispose thereof at Purchaser's expense.

Anticipated Non-Performance

48. Notwithstanding other provisions in these General Conditions regarding suspension, each party shall be entitled to suspend the performance of his obligations under the contract, where it is clear from the circumstances that the other party will not be able to perform his obligations. A party suspending his performance of the contract shall forthwith notify the other party thereof in writing.
49. If Supplier has well founded reason to believe that Purchaser is or will be unable to fulfill his contractual obligations, as well as in the case of suspension of payment, bankruptcy, liquidation or sale of part or all of Purchaser's assets, Supplier has the right to request suitable insurance and may suspend performance of the contract until such insurance is received. If such additional insurance is not received within a reasonable period of time, Supplier may by notice in writing terminate the contract and shall then be entitled to compensation for the loss he has suffered by reason of Purchaser failure to supply the requested additional insurance.

Consequential Losses

50. Save as otherwise stated in these General Conditions there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or for any other consequential or indirect loss whatsoever.

Disputes and Applicable Law

51. All disputes arising out of or in connection with the contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.
52. The contract shall be governed by the substantive law of The Netherlands