



# GENERAL CONDITIONS OF CONTRACT FOR ENTERPRISES IN THE STEEL AND SYNTHETICS MANUFACTURING AND TECHNOLOGY INDUSTRY

Filed at the Registry of the District Court in Rotterdam on June 3<sup>rd</sup> 1992 under number 427/92  
Published by Ondernemersorganisatie CWM, Regulierenring 14, 3981 LB Bunnik, The Netherlands

## Article I General

1. These General Conditions of Contract apply to all offers made by us, to all orders given to us and to all contracts made with us. No reference made by the customer to any general conditions of his own at any stage of the making of a contract with us shall be recognised by us. In the event of any inconsistency between the terms hereof and the terms of written conditions of purchase or contract or otherwise of the customer our General Conditions shall prevail, save if and to such extent as any conditions of the customer have been expressly accepted by us in writing.
2. In these General Conditions:  
"the customer" means: any individual or body corporate who purchases products from us or to whom we make offers;  
"we", "us" and "our" means: the contractor who has received an order from the customer or made a contract with the customer, or the person who in his offer refers to these General Conditions;  
"products" means: all goods that are the subject of any contract and all results of the rendering of services by us, including but not limited to contracting of works, assembly, installation and advice.

## Article II Offers; conclusion of contracts

1. Unless expressly stated otherwise in writing, all offers or quotations made by us are without commitment. Every offer or quotation made by us shall be based on the assumption that we are able to execute the order under normal conditions and during regular working hours. A contract shall be concluded only if, as and when we accept a customer's order in writing or if, as and when we commence the execution of an order. The date of conclusion of the contract shall be the date of dispatch of our written order confirmation or, as the case may be, the first day of actual execution of the order by us.
2. If at the customer's request we perform any work or render any service before a contract has been concluded, we shall be entitled to demand payment therefor in accordance with our scale of fees or prices then in force, unless expressly otherwise agreed in writing.
3. If an order is accepted by us in writing our commitment shall extend no further than the obligations accepted by us in writing. The customer's order shall be considered binding on the customer as long as the order has not been refused by us.
4. Any terms in the customer's order that may be additional to or vary from the terms of our offer or quotation shall only be binding on us if and to the extent that such additional or varying terms have been expressly accepted by us in writing.
5. All figures, measurements, weights and/or other descriptions of the products as stated by us have been carefully prepared but we cannot guarantee that no variations will occur. Samples, drawings, models, etc. shown or supplied by us shall at all times be merely indications of the products concerned.

## Article III Prices

1. Unless expressly otherwise agreed in writing, our prices are ex works and therefore do not include e.g. dispatch and/or carriage, packing, insurance, any duties or taxes or other charges levied by any government agency, or any costs or expenses relating to goods made available to us by the customer in connection with the execution of the order.
2. In the event of our costs increasing between the date of conclusion of the contract in accordance with Article II.1 and the date when execution of the order is completed, owing to increases in costs of materials, ancillary materials, parts, raw materials, wages, salaries, social security contributions and customs, excise or other duties or taxes, we shall be entitled to increase our prices accordingly.
3. We shall be entitled to charge separately for additional work we have execu-

ted, even if no written instruction for such additional work has been given and/or the price therefor has not been previously agreed. For the purposes of calculating the price of additional work the preceding paragraphs of this article shall apply mutatis mutandis. The applicability of Section 7a:1646 of the Netherlands Civil Code is expressly excluded.

4. If assembly or installation of products is expressly included in our order confirmation and therefore an integral part of the contract made with the customer, the price as referred to in this article shall include assembly or installation and operational completion of the products at the site or premises stated in the contract. Save if and to the extent that the same are expressly included in our order confirmation, the costs and expenses separately mentioned in Article VI and the financial consequences of the customer's obligations described in Article VI are not included in said price.

## Article IV Packing

Unless expressly otherwise agreed in writing, we shall -if necessary and at our sole discretion- provide the products with the kind of packing normally used in the trade, subject to what is provided in Article III.1. Unless otherwise agreed with the customer in writing, packing materials are not taken back by us.

## Article V Documents, ancillary materials and advice

1. Cost estimates, plans, catalogues, pictures, drawings, measurement and weight specifications prepared, produced or made available by us or other documents relating to offers or supplies, as well as ancillary materials such as models, moulds, templates, stamps, matrixes and tools, shall remain our property at all times -even if the production cost thereof has been charged to the customer- and must immediately be returned to us upon request.
2. Save if authorised by us in writing, it is the customer's duty to ensure that the documents, ancillary materials and information supplied by us as described in the preceding paragraph shall not be copied or duplicated and shall not be disclosed or made available to any third party, whether for use or otherwise. We shall be entitled to require the customer to cooperate in the signing of such confidentiality statement as we shall submit to him.
3. Subject to what is provided in Article II.5, all recommendations, calculations statements and information made or supplied by us concerning the capacity results and/or expected performance of products to be supplied by us or work to be carried out by us shall be binding on us only if and to the extent that the same have been included in our written order confirmation or form part of the separate written contract made between us and the customer.

## Article VI Assembly; installation

1. It is the customer's duty to ensure that all amenities, facilities and conditions required for the assembly or installation work to be carried out by us shall be provided and in place at the appropriate time and in the proper manner. Such facilities and other services to be provided for this purpose shall at all times be at the risk and for the account of the customer.
2. Among other things, the customer shall at his own risk and for his own account make provisions to enable our technicians to carry out the assembly or installation work. With due observance of such safety instructions and other precautionary measures as may be required the customer shall provide the necessary appliances and, either personally or through auxiliary personnel made available by him, shall give any assistance that may be needed. The customer shall ensure that suitable accommodation and other personal facilities are available to our technicians.
3. Travel expenses shall be charged separately to the customer. In deviation from what is provided in Article III.4 we reserve the right to make a separate charge for extra labour costs in the event that contrary to the assumption stated in Article II.1 we should be compelled to carry out the work outside the regular working hours and/or under exceptional circumstances.



- The provisions of Article VII relating to the time for delivery or completion shall also apply to the agreed time for assembly or installation. The assembly or installation time agreed with us shall not include any running-in time for machinery, equipment, etc. assembled or installed by us.
- Subject to the provisions of this Article VI, the relevant terms in the other articles of these General Conditions shall apply with regard to the price, completion, risk and warranty in respect of assembly or installation.

#### Article VII Time for delivery

- The time for delivery, including the time for completion of the work to be carried out by us, shall commence on the date stated in our written order confirmation. However, if any particular data, drawings, etc. are needed or any particular formalities must be performed for the execution of the order, the time for delivery shall commence on the date when all such data, drawings, etc. are in our possession or, as the case may be, the requisite formalities have been completed. If a down payment on placing the order is demanded by us, the time for delivery shall commence later than the date of our written order confirmation or receipt of the above-mentioned documents, namely on the date when we receive such down payment.
- The times for delivery stated by us are not an absolute deadline and in all cases shall be without commitment. The mere expiry of such times shall not constitute an event of default. We shall make every effort to observe the stated times for delivery as closely as possible.  
Except in the event of deliberate failure or gross negligence, if the time for delivery is exceeded that fact shall not entitle the customer to claim compensation or to refuse the product or to cancel the whole or any part of the contract.

#### Article VIII Force majeure

- Force majeure on our part means: any event beyond our control which prevents us from fulfilling all or any of our obligations to the customer or by reason of which we cannot reasonably be required to fulfil our obligations, regardless whether such event was foreseeable at the time when the contract was made. If an event of force majeure occurs we shall notify the customer as soon as possible.
- All events of force majeure, including but not limited to war, imminent war, civil war, insurrection, hostage-taking, capture or seizure, fire, water damage and flooding, strikes, sit-ins, lock-outs, shortage of labour or raw materials, defects in machines or equipment and interruptions in the supply of energy, whether occurring at our own works or at the works of others from whom we must obtain all or part of the requisite goods or raw materials, and also if occurring during storage or transport, whether or not under our management, as well as all other causes of force majeure not attributable to any act or omission on our part, shall release us from any duty to fulfil our obligations, including the time for delivery, for the duration of the event concerned. In any of the above-mentioned events claims for compensation on account of complete or part non-fulfilment shall likewise be excluded.
- If the event of force majeure has continued for six months we shall have the right to cancel the whole or any part of the contract by written notice. In such case the customer shall not be entitled to any compensation.

#### Article IX Delivery

When the products concerned have left our works or when we have informed the customer in writing that the products are ready for dispatch, the products shall be considered delivered, entirely without prejudice to the provisions of Article XI and irrespective of our duty (if any) to fulfil obligations relating to assembly or installation work. The place of delivery therefore shall be our works, even if we have agreed delivery carriage or freight paid. If an order is supplied in parts the individual consignments shall each be considered to be delivered as aforesaid.

#### Article X Risk

- The risk in the products shall pass to the customer when we deliver the products in accordance with the terms of Article IX. This provision shall apply without limitation, also in the event of damage to products caused by destruction of the packing.

- If the customer fails to take delivery of the products, or fails to do so properly or within the agreed time, such failure shall constitute an event of default by the customer, without prior notice of default being required. In that case we shall be entitled to store the products at the risk and for the account of the customer or to sell the products to a third party. The customer shall remain liable for payment of the purchase price, increased by interest and all costs, but if we sell the products to a third party said debt shall be reduced by the net proceeds of the sale.
- Unless otherwise agreed with the customer in writing, dispatch and/or carriage of the products, if undertaken by us, shall be at the risk and for the account of the customer and the goods-in-transit risk shall not be insured by us. Even if we have made a statement to the carrier to the effect that all damage occurring in transit is for our account, the goods-in-transit risk shall nevertheless be for the account of the customer and we shall not be required to take any steps to recover any loss. If wished we shall assign our rights against the carrier to the customer.
- Unless expressly otherwise agreed in writing, any products that have been sent to us for processing, repair or inspection shall be held by us at the risk of the customer. We agree and undertake that any products so sent to us by the customer shall be kept and treated by us with due and proper care.

#### Article XI Reservation of ownership

- The property in the products shall not pass to the customer until the customer has fulfilled all his obligations arising out of the contract concerning the products or out of any other agreement relating thereto. In addition to payment of the purchase price, the term obligations shall also include the work performed or to be performed with respect to the products as well as all surcharges, interest, taxes, costs, etc. payable by the customer under the contract.
- Prior to the date of acquiring the property in the products the customer shall not be entitled to dispose of the products or to use the same as collateral for any loan or to pledge the same as security for any debt or to mortgage the same or otherwise to transfer or assign the same to any third party. However, the products may be processed, incorporated into other goods or otherwise used by the customer in the normal course of his business.
- The customer shall enable us forthwith to regain possession of the product supplied by us, without any prior notice of default or judicial intervention being required for that purpose. In anticipation of the event that the customer should fail to fulfil any of his obligations (of payment and otherwise) to us, and without prejudice to any of our other rights, we are hereby given irrevocable authorisation by the customer to disassemble the products supplied by us that have been affixed to any movable or immovable property and to recover possession of the same forthwith upon our demand, without any prior notice of judicial intervention being required for that purpose.
- It shall be the customer's duty to give us immediate written notice in the event that third parties (may) enforce claims upon any of the products which are subject to our reservation of ownership. If the customer is shown to have breached this duty he shall be required to pay to us liquidated damages at the rate of 15% of the unpaid part of the debts to which our reservation of ownership relates, entirely without prejudice to any of our other rights in respect of such debts.
- Every payment we receive from the customer shall be applied first of all towards the discharge of the debts owed to us by the customer in respect of which no reservation of ownership in the terms of paragraph 1 of this article is in force (anymore).

#### Article XII Credit control surcharge

We may increase the invoice amount by a credit control surcharge to be separately stated in the invoice. If payment is made within 30 days from the invoice date said surcharge need not be paid.

#### Article XIII Payment

- Unless otherwise agreed in writing, the purchase price of the products and/or the price agreed in respect of work carried out or to be carried out by us shall be payable, at our discretion, either in cash upon delivery or within 30 days after delivery in accordance with Article IX. All payments are to be made without any rebate or set-off. If the customer believes he is still entitled to enforce



ce any right or claim, in whatever form, with respect to the delivery of the products or the execution of the order, the existence of such right or claim shall not release him from the obligation to make payment in the agreed manner and shall not entitle him to suspend payment.

2. If payment by instalments has been agreed, such payments -save for different arrangements expressly agreed in writing between the parties- shall be made as follows:

- 1/3 (one third) upon placing the order;
- 1/3 (one third) when the products are ready for dispatch or upon completion of the work to be carried out by us;
- 1/3 (one third) within one month after the second instalment has become due.

3. Payment for additional work is to be made immediately as we charge the customer for such work.

4. If at any time we have reasonable doubt as to the customer's solvency we may at our discretion, before performing (or continuing to perform) the contract, require the customer to pay the whole or part of the purchase price in advance or to furnish adequate security, e.g. by means of a bank guarantee or a pledge on products supplied by us. In an event as aforesaid we shall also be entitled to send products C.O.D. (cash on delivery) only.

5. If we have agreed with the customer that payment shall be made through a bank, or when security is furnished by means of documentary credit or bank guarantees, the customer shall ensure that such security is provided through a first class bank. If we have reasonable doubt as to that qualification we may reject the bank proposed by the customer and shall be entitled to designate another bank.

6. If any payment is overdue the mere expiry of the term for payment shall by operation of law constitute an event of default by the customer, in which case all debts of the customer to us outstanding at that time shall become immediately payable in full, entirely without prejudice to any of our other rights.

7. Without any prior notice being required for that purpose, we shall charge interest at a rate of 2% over the rate of statutory interest from time to time in force in The Netherlands on all accounts receivable from the customer which have not been paid by the last day of the term for payment, such interest to accrue from that date. At the end of each year the amount on which the interest is calculated shall be increased by the interest due over that year. If at the end of an extension of time (if any) subsequently granted by us in writing the customer still has not paid the principal sum and the interest due, he shall be liable to compensate us for all costs incurred in and out of court; such costs are set at a minimum of 15% of the debt outstanding and shall in no event be less than NLG 250.00, not including VAT.

8. We shall have the right to hold as security all property belonging to the customer that comes into our possession in connection with the customer's order and to suspend the release of such property until the customer has fulfilled all his payment obligations to us.

#### Article XIV Cancellation by us; termination

1. If the customer fails to fulfil any of his obligations under the contract made with us, or fails to do so within the agreed time, such failure shall constitute an event of default by the customer and we shall be entitled, without prior notice or judicial intervention being required for that purpose:

- to suspend further deliveries or work under the contract and any other directly related agreements until payment has been sufficiently secured; or
- to cancel the contract and any other directly related agreement in whole or in part;

entirely without prejudice to any of our other rights and without liability to us for any compensation whatsoever.

2. If the customer is declared bankrupt, or goes into compulsory liquidation, or is granted a suspension of payments, or if the customer's business is discontinued or wound up, all contracts made by us with the customer shall be terminated by operation of law, unless we inform the customer upon a reasonable term of notice that we demand specific performance of the contracts (or a particular contract), in which case we shall be entitled, without further notice being required for that purpose:

- to suspend further deliveries or work under the contract(s) concerned until payment has been sufficiently secured; and/or
- to suspend all our payment obligations to the customer (if any), arisen on any account whatsoever;

entirely without prejudice to any of our other rights and without liability to us for any compensation whatsoever.

3. Upon the occurrence of any of the events referred to in paragraph 1 or paragraph 2 of this article all our accounts receivable from the customer shall be immediately payable in full and we shall be entitled to recover the products to which those accounts relate and may enter upon the customer's premises by our servants or agents for that purpose. The customer shall be required to take the necessary measures so as to enable us to effectuate our rights.

#### Article XV Cancellation by customer

1. If the customer should wish to cancel his order and we have given our written consent to such cancellation, the customer shall be required -unless otherwise agreed with us in writing- to take over from us at the price paid by us, including labour costs, all materials, whether or not already processed, that we have bought (forward or otherwise) for the purpose of the order, and to compensate us for, inter alia, loss of profit by payment of 15% of the agreed price, entirely without prejudice to any of our other rights. In the event that in connection with the order we have made a foreign exchange forward contract with any bank or other third party, the customer shall also be required to compensate us for any foreign exchange losses suffered in consequence of the cancellation.

2. The customer shall be required at all times to save us harmless from and against any claim or action that third parties might make or bring in consequence of the cancellation of the order.

#### Article XVI Inspection and complaints

1. It shall be the customer's duty to make (or have his servants or agents make) a close examination of the products immediately upon their arrival at the place of destination or, as the case may be, upon completion of the work carried out by us, or -whichever is the earlier- upon receipt of the products by the customer or another person acting on the customer's instruction. Complaints concerning defects in the products that are due to faulty material or manufacturing errors and complaints concerning differences in quantity, weight, composition or quality between the products supplied and the specifications stated in the order confirmation and/or invoices must be made by written notice to us not later than fourteen days after arrival of the products or completion of the work, entirely without prejudice to what is provided in paragraph 3 of this article. However, if testing or inspection has taken place at our works, any complaint must be made during such testing or inspection and must be recorded in writing.

2. Defects that cannot reasonably be discovered within the above-mentioned period must be reported to us by written notice immediately upon being discovered but no later than within the applicable warranty period. Complaints concerning errors in invoices may only be made by written notice within fourteen days of receipt of the invoices, the date of receipt being set at one day after the date of the invoice concerned.

3. Minor variations within the customary tolerances shall not entitle the customer to file a complaint or demand compensation or request that the order be cancelled.

4. In the event of the customer's failure to give us notice within the periods specified in this article, the customer's claim concerning defects as aforesaid shall be absolutely barred.

5. Upon discovery of any defect the customer shall immediately cease the use, processing, operation or installation of the products concerned and shall give us all such assistance as we may require for the purpose of examining the complaint, among other things by giving us the opportunity to make (or have our servants or agents make) an on-site investigation into the conditions under which the products were being processed, operated, installed and/or used.

6. Complaints will only be considered provided we are given the opportunity to verify that the complaint is valid and genuine. The customer shall not be allowed to return the products before we have agreed thereto in writing.

#### Article XVII Warranty

1. We warrant that the products will be free from defects in material and workmanship for a period of six months from the date of delivery in the terms of Article IX. For all defects reported to us within the warranty period our liability is limited to repairing or replacing, at our option and at no charge to the customer, any defective products. If for the discharge of our liability under the



warranty we replace (parts of) products supplied by us, the products (or parts) so replaced shall become our property. All costs and expenses that exceed the liability specified above, including but not limited to transport charges, travel expenses and the cost of disassembly and reassembly, shall be for the account of the customer. If for the discharge of our liability under this warranty we carry out repairs to products supplied by us, the products concerned shall remain entirely at the risk of the customer.

2. Our warranty shall not be valid:

- A. if any defect is the result of abuse, misuse or inexpert use, or the result of other causes than unfitness of material or workmanship;
- B. if in accordance with the customer's order we have supplied used material or used goods;
- C. if the cause of any defect cannot be conclusively proved;
- D. if our instructions for the use of the products and other specifically applicable warranty instructions have not been accurately and fully observed.

3. If any products of the customer have been sent to us for processing or repair, we warrant only that the processing or repairs ordered by the customer will be free from defects in workmanship. In respect of parts or components which we do not manufacture ourselves, our warranty is limited to such warranty as we are given by our suppliers. If we have agreed to assemble or install the products, our warranty shall be valid in that respect only if there is a case of inaccurate or faulty assembly or installation. In such case the warranty period shall begin on the date when in our judgment the assembly or installation has been completed, provided that in any such case the warranty period shall end nine months after the date of delivery in the terms of Article IX.

4. Our warranty shall cease:

- A. if any flaws in products or work are wholly or in part the result of government regulations with respect to the quality or nature of the materials used or with respect to the manufacturing process;
- B. if during the warranty period the customer (or any person acting on the customer's instruction) has subjected the products supplied by us to unauthorised modifications and/or repairs;
- C. if the customer fails to fulfil or does not within the agreed time fulfil any of his obligations under the contract or any other agreement relating thereto, including but not limited to his obligations specified in these General Conditions with respect to inspection and complaints.

5. Unless expressly otherwise agreed in writing, the performance of our warranty obligations specified in this article shall be limited to the territory of The Netherlands.

#### Article XVIII Liability

1. Our liability shall be limited to performing the warranty obligations specified in Article XVII.

2. Except in the event of deliberate failure or gross negligence on our part and save for our warranty obligations we shall in no event be liable for any damage or loss suffered by the customer, including but not limited to consequential loss, intangible loss, trading loss, environmental damage or loss resulting from any liability to third parties.

3. If and to the extent that, notwithstanding the provisions of paragraphs 1 and 2 of this article, the court of any competent jurisdiction should determine that we are liable in any particular case, our liability to the customer, however caused, shall in all cases be limited to the amount of the contract price (not including VAT) in respect of any occurrence (a connected series of occurrences being regarded as a single occurrence).

4. The customer shall be required to save us harmless from and against and to compensate us for all costs, losses and interest we might incur as a direct consequence of any claim or action by third parties against us in respect of events, acts or omissions occurred, done or made in or within the context of execution of the order for which pursuant to these General Conditions we are not liable to the customer.

5. We shall not be liable for any infringement of patents, licences or other rights of third parties caused by the use of data which have been supplied to us by or on behalf of the customer for the purposes of execution of the order. Where in the written contract made with the customer or in our order confirmation we refer to any technical, safety, quality and/or other regulations with respect to the products, the customer shall be deemed to be familiar with such regulations unless he immediately notifies us to the contrary in writing, in which case we shall send the customer further information on such regulations. The

customer shall be required to give his customers written notice of said regulations as these are in force from time to time.

#### Article XIX Controlling law and jurisdiction

1. All contracts made with us, in which these General Conditions are included or of which these General Conditions form any part, shall be governed by the laws of The Netherlands. For the purposes of service of process the parties shall be deemed to have elected domicile in the place where we have our office.

2. Unless mandatory rules of the law require otherwise, and unless expressly otherwise agreed by the parties in writing, all disputes which might arise in connection with any contract made with us or in connection with these General Conditions shall be submitted to the judgment of the courts having jurisdiction in the place where we have our office.

3. Unless expressly otherwise agreed by the parties in writing, the applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980) shall be excluded.

In the event of differences of opinion on the content, tenor and purpose of any of the terms of this document, the most plausible interpretation based on the Dutch language version of these General Conditions shall prevail.