

**GENERAL TERMS OF DELIVERY AND PAYMENT of Dallaserra Ridderkerk Spares B.V., Wolweverstraat 39, 2984 CE Ridderkerk, The Netherlands**

**1. GENERAL**

These terms will apply to and form an indissoluble part of all written and oral contracts to which we are a party.

**2. OFFERS**

- a. All offers are made without engagement.
- b. If the customer supplies data, drawings etc. to the contractor, the contractor may assume them to be correct and may base his offer upon them.

**3. PRICES**

- a. The prices referred to in the offer are based on delivery ex works (Ridderkerk) and are exclusive of VAT and of packing charges.
- b. Transport, forwarding and postage costs are at the expense of the customer, as well as government charges and levies directly connected to the delivery.
- c. If his offer is not accepted, the contractor has the right to charge the customer for all the costs which he has had to incur in order to make his offer.
- d. If and insomuch as the period between the date of the quotation and the delivery or completion exceeds a period of 6 months and prices of materials, wages etc. have undergone changes in said period, the price agreed upon or the sum contracted for will be proportionally changed. Payment of any additional charges by reason of this article will take place at the same time as the sum total or the last instalment thereof.

**4. DELIVERY PERIOD**

- a. The delivery period quoted by the contractor is approximate.
- b. In fixing the delivery period the contractor assumes that he can execute the order in the circumstances known to him at that time.
- c. The delivery period starts when agreement has been reached on all technical details, all necessary data, final drawings etc. are in the possession of the contractor.
- d. If circumstances occur other than those known to the contractor when he fixed the delivery period, the contractor may extend the delivery period by the time necessary to execute the order. If the work cannot be fitted into the planning schedule of the contractor, it shall be completed as soon as his planning schedule permits this.
- e. If there is extra work, the delivery period shall be extended by the time that is necessary to supply (or arrange for the supply of) materials and parts for this purpose and to carry out the additional work.
- f. If work is impossible due to weather conditions, the delivery period shall be extended for the term of the delay that has occurred as a result.
- g. If the agreed delivery period is exceeded, this shall not under any circumstances confer entitlement to compensation unless this has been agreed in writing.

- h. If goods have not been collected by the time the delivery period expires, they shall continue to be held available for the customer. Uncollected goods shall be stored at the expense and risk of the customer .

## **5. TRANSMISSION OF RISK**

- a. In case of delivery ex works the risk in relation to the goods shall pass at the moment when the seller makes them available to the buyer.
- b. Irrespective of the provisions of the previous paragraph, the customer and the contractor agree that the contractor shall arrange for the carriage. The risk of storage, loading, carriage and unloading shall be borne by the customer in this case too. The customer may insure himself against these risks.
- c. Even if the seller installs and/or assembles the goods sold, the risk in relation to the goods shall pass at the moment when the seller makes them available to the buyer at the business premises of the seller or at another agreed place.
- d. If a purchase involves a trade-in and the buyer continues to use the goods, the risk in relation to the goods to be traded in shall continue to be borne by the buyer until the moment at which he transfers them into the possession of the seller.

## **6. LIABILITY**

- a. The contractor is liable for damage which the customer suffers and which is the direct and sole result of a failure attributable to the contractor. However, only loss or damage for which the contractor is insured or for which he should reasonably have been insured will be eligible for compensation.
- b. The following are not eligible for compensation:
  - ❑ Consequential loss or damage, including for example loss or damage due to business standstills and loss of profit;
  - ❑ Damage to goods which are being worked on or to goods which are in the vicinity of the place where the work is being carried out;
  - ❑ Damage caused by the intent or deliberate recklessness of auxiliaries.
- c. The customer indemnifies the contractor against all claims of third parties on account of product liabilities due to a defect in a product which has been supplied by the customer to a third party and consisted wholly or partly in products and/or materials supplied by the contractor.

## **7. PAYMENT**

- a. Unless explicitly stated otherwise payment is to take place within 30 days after the date of the invoice.
- b. Payment shall be made at the place of business of the contractor or by remittance to an account designated by the contractor.
- c. Regardless of the agreed terms of payment, the customer shall be obliged, at the request of the contractor, to provide such security for the payment as the contractor deems sufficient for the payment. If the customer fails to do so within the specified period, he shall be deemed to be immediately in default. In that case the contractor shall have the right to terminate the agreement and recover his loss or damage from the customer.

- d. The customer does not have the right to set off claims against the contractor, unless the contractor has been declared bankrupt.
- e. The full claim for payment shall be immediately due and exigible if:
- A payment period has been exceeded;
  - The customer has been declared bankrupt or has applied for a suspension of payments;
  - The property or accounts receivable of the customer are seized;
  - The customer (being a legal entity) is wound up or liquidated;
  - The customer (being a natural person) is made the subject of a guardianship order or dies.
- f. If payment has not been made within the agreed period for payment, the customer shall immediately owe interest to the contractor. The interest shall be 10% per year or the statutory rate of interest, whichever is the higher. For the purpose of calculating the interest, part of a month shall be treated as a full month.
- g. If payment has not been made within the agreed period for payment, the customer shall owe the contractor all extrajudicial costs of recovery, subject to a minimum of €50.
- The costs shall be calculated on the basis of the following table:
- |   |         |
|---|---------|
| <input type="checkbox"/> 15% on the first                   | €3.000  |
| <input type="checkbox"/> 10% on any additional amount up to | €6.000  |
| <input type="checkbox"/> 8% on any additional amount up to  | €15.000 |
| <input type="checkbox"/> 5% on any additional amount up to  | €60.000 |
| <input type="checkbox"/> 3% on any additional amount up to  | €60.000 |
- If the extrajudicial costs actually incurred are higher than those in the above-mentioned table, the costs actually incurred shall be owed.
- h. If the contractor is held to be in the right in legal proceedings, all costs which he has incurred in connection with the proceedings shall be borne by the customer.

## **8. RETENTION OF PROPERTY**

- a. After delivery of the goods the contractor shall retain title to them as long as the customer:
- Fails or will fail to perform his obligations under this agreement or other similar agreements;
  - Fails or will fail to pay for activities performed or yet to be performed under such agreements;
  - Has not paid claims that result from the non-observance of the above-mentioned agreements such as damage, penalties, interest and costs.
- b. As long as title to delivered goods is retained by the contractor, the customer may not encumber them other than in the normal course of his business.
- c. After the contractor has invoked his reservation of title, he may retake possession of the delivered goods. The customer shall allow the contractor to enter the place where the goods are situated.
- d. If the customer is unable to invoke the retention of title because the delivered goods have been mingled, distorted or changed by way of accession, the customer shall be obliged to grant the contractor a lien on the newly created goods.

## **9. CLAIMS**

The customer may no longer invoke an instance of non-performance if he does not lodge a written claim with the contractor within 14 days of the date on which he discovers the defect or could reasonably be expected to discover it.

## **10. GUARANTEE**

If and inasmuch as the contractor has given a guarantee with the goods supplied by the contractor, such a guarantee is restricted to material and manufacturing faults. This guarantee means that the contractor will mend the faults at his expense or take back the goods (partly or completely) in order to replace them by a new delivery. If goods are offered to be worked, repaired etc. the guarantee will only cover the soundness of the workmanship of the work to be carried out. This guarantee may not be applied if:

- ❑ the faults result from injudicious use or other causes than unsound materials or manufacturing;
- ❑ by arrangement used materials or used goods are supplied;
- ❑ the cause of the faults cannot be clearly proven.

The guarantee for parts not manufactured by the contractor does not exceed the guarantee given by the contractor's suppliers.

This guarantee does not apply:

- ❑ in case of faults which are partly or fully due to government regulations with regard to the quality or the nature of the materials used or with regard to the manufacturing process;
- ❑ If the customer modifies or repairs the supplied material at his own initiative during the guarantee period or if the customer does not or does not properly in time, meet the requirements arising from this or any other connected contract.
- ❑ If defects are the result of normal wear and tear;
- ❑ If defects are the result of non-maintenance, defective maintenance or injudicious use.

The customer will only be entitled to invoke the obligations of guarantee if he has fully performed his obligations to pay.

## **11. TERMINATION**

If the customer wishes to terminate the agreement in circumstances where the contractor is not in default and the contractor agrees to this, the agreement shall be terminated by mutual consent. The contractor shall in that case be entitled to compensation of all pecuniary damage, such as any loss suffered, loss of profit and costs incurred.

## **12. APPLICABLE LAW**

- a. The Law of The Netherlands is applicable.
- b. The Vienna Convention on Contracts for the International Sale of Goods (CIGS) is not applicable, nor is any other international regulation the exclusion of which is permissible.

- c. Only the civil court that has jurisdiction in the place of establishment of the contractor may take cognizance of disputes, unless this would be contrary to peremptory law. The contractor may deviate from this rule of jurisdiction and apply the statutory rules governing jurisdiction.
- d. The parties may agree a different form of dispute resolution such as arbitration or mediation.