

General Terms and Conditions of Delivery and Payment of Stork IMM B.V.

Preamble

These General Terms and Conditions shall be applicable to our offers and the contracts concluded by us, including related contracts, in so far as they do not contain explicit written deviations from the present terms and conditions. We do not accept other general terms and conditions which are stipulated by the customer. We accept only those deviations from the present general terms and conditions with which we agree in writing.

Section 1 - Offer and confirmation of order

1.1

Our offers for the supply of goods shall remain valid for thirty days. A contract shall become effective only on the basis of our written confirmation of order. The contents of the contract shall exclusively be determined by said confirmation of order. Alterations in and/or additions to the contract shall be agreed upon in writing. Agreements made with subordinates of ours shall have no binding effect unless we confirm them in writing or if the agreements are made under power of attorney.

1.2

Illustrations, catalogues, technical data and computer programs furnished by us shall remain our property and are free of obligation on our part, unless expressly agreed upon otherwise in the confirmation of order. The customer is responsible for them not to be copied and/or submitted to third parties or laid open to them for inspection without our permission. We are not under the obligation to furnish detailed drawings.

Illustrations, catalogues, drawings, specifications of dimensions and weights furnished to us by the customer shall remain her property. They shall not be copied and/or submitted to third parties or laid open to them for inspection, if requested by the customer.

1.3

The machinery to be supplied shall be designed and manufactured on the basis of Dutch standards and regulations. Unless otherwise stated in the offer, adjustments to standard and regulations which apply at the customer's domicile shall be made by us for the customer's account and risk, provided that these standards and regulations are made known to us in time.

Section 2 - Price

2.1

The price shall be based on the agreed extent of the order, time of delivery, way of delivery and terms of payment.

2.2

We reserve the right to alter the prices, if there should be changes in the above-mentioned factors (irrespective as to whether these could be foreseen or not at the time when the confirmation of order was sent off) due to causes to be traced to the customer. Changes in prices pursuant to this section shall as soon as possible be notified to the customer in writing.

Section 3 - Terms of payment

3.1

Our offers are based on the following terms of payment unless mentioned otherwise:

1/3 upon ordering the goods

1/3 upon notice of the goods being ready for delivery

1/3 30 days after commissioning, but not later than 60 days from the date of notice of the goods being ready for delivery.

3.2

All payments shall be made into an account to be specified by us without any deduction or compensation.

3.3.

All costs involved in providing securities for payment shall be for the account of the customer.

3.4

If contrary to the terms stated in Section 3.1 payments should take place against submission of transport documents, it shall also be possible for such payments to be made against submission of a warehouse receipt, if transportation cannot take place due to causes beyond our control. To that end the customer shall make an arrangement with her bank. In that case the costs of storage shall be for the account of the customer.

3.5

If the due dates of payment are exceeded, the amounts due shall be increased by the current discount rate for promissory notes of De Nederlandsche Bank plus three per cent, which increase shall be calculated for the period over which the customer's payment(s) is (are) overdue.

Section 4 - Term of delivery

4.1

The term of delivery shall commence on the day on which, after we have sent off the confirmation of order, we have received the first payment pursuant to the stipulations in Section 3.1, and securities have been provided for the payment of the remaining amounts, and when before the start and during the execution of the work the customer has let us have the required data as well as the sample materials that may be needed. If a fixed date of delivery has been agreed upon and the customer has not timely met her obligation to make a certain payment or to make the required data available, the date of delivery shall be moved forward accordingly.

If the first instalment has not been received within three months from the date of our confirmation of order, we shall have the right to dissolve the contract, without prejudice to our right to compensation for losses.

4.2

If due to causes beyond our control it should not be possible for us to deliver in time, we shall see to it that the goods are expertly stored for the account and at the risk of the customer, without prejudice to the customer's obligation of timely payment of the instalments that may still be due.

4.3

If the customer should suffer losses due to a failure on our part to observe the agreed date of delivery, the customer shall as from three weeks after our exceeding the time of delivery have right of payment to her of 0.1% of the total sum of the order for each succeeding working day the time of delivery has been exceeded up to a maximum of 5% of the total sum of the order for the entire and sole settlement of the losses suffered by the customer, exclusive of any other right on account of the time of delivery being exceeded. The right to receive payment shall lapse if within thirteen weeks from the date of delivery the customer has not notified in writing that she will make use of said right.

Section 5 - Delivery/Property proviso

5.1

Delivery shall take place 'ex-factory', unless otherwise agreed upon. The conditions of these ways of delivery are subject to INCO terms valid on the date of the confirmation of order.

5.2

If contrary to the stipulation under 3.1 of these terms the delivery has taken place before payment of the entire sum due on the basis of the contract, or if no security for payment of the amounts due has been received yet, the good delivered shall remain our property.

If contrary to the stipulation in Section 14 Dutch law should not or only in part be applicable the contract and the law prevailing in that case should not allow of property proviso, we shall have the enjoyment of all other rights which grant us the nearest equal title to the goods. The customer shall always give full cooperation inclusive of free access to the machinery delivered, in order to enable us to establish these rights and assert them. The customer shall, in any case until full payment to us of the amounts due has taken place, maintain the goods delivered in an excellent state of repair and also have them adequately insured at their replacement value. At our request, a certificate of insurance must be produced.

The customer is not entitled to pledge the goods or offer them for security to a third party in any other way before full payment to us of the amounts due has taken place.

5.3

If the customer should fail to pay the entire sum due on the basis of the contract, after having been declared by us to be in debt, we shall be entitled, without judicial interference, to recuperate the goods, and to dissolve the contract without prejudice to our right to compensation of losses suffered by us.

Section 6 - Acceptance and guarantee

6.1

If we are to carry out assemblage and/or commissioning work or if we have agreed upon conducting preliminary and/or acceptance tests, the customer shall make available to us free of charge all the necessary auxiliary materials, raw materials, and other materials in constant quality and quantity, and the customer shall see to it that before the date on which the assemblage is started the foundation of the machinery fully meets our specified requirements. Any costs involved in not or not timely meeting these obligations shall be for the account of the customer.

As soon as the goods have been delivered in the manner agreed upon and, in so far as has been agreed upon, have been commissioned by us, and the preliminary and acceptance tests have generally been successfully completed, the customer shall be considered to have taken over the goods, by which our responsibility on any ground whatsoever shall cease to exist, with the exception of our guarantee obligations included in this section.

The goods are also considered to have been taken over if the customer has failed to make the above-mentioned raw materials and/or other materials available within 3 months from the date of our request, the foundation does not satisfy our specified requirements or if the customer's obligations have not been met in any other way, or if the goods are placed in service by the customer for commercial production. In the event of shortcomings which do not or hardly affect the envisaged use of the goods, the goods shall be considered to have been accepted irrespective of said shortcoming. These shortcomings shall as soon as possible be rectified by us under the guarantee pursuant to this section.

6.2

The customer shall enable us to make such improvements and changes as are considered necessary by us.

6.3

We guarantee the reliability of the construction and of the materials used for all the goods delivered by us during the term mentioned under 6.4. The deficiencies covered by this guarantee shall be rectified by us free of charge (in our option by repair or replacement of the defective part) and we shall refund the wages spent by the customer at our written request in connection with such repair or replacement.

This guarantee shall commence immediately after delivery or after termination of the commissioning work, in so far as this work has been agreed upon.

If we replace parts/products due to warranty obligations, the replaced parts/products shall become our property.

Wearing and expendable parts are not covered by the guarantee.

6.4

All guarantee periods shall end 6 months from termination of the commissioning work, or 9 months from delivery of the goods, with the proviso that the period which lapses first shall terminate the guarantee.

6.5

During the above-mentioned guarantee period we shall rectify all software errors to the best of our ability, such errors being defined as reproducible deviations from the software specifications furnished by us. We do not guarantee that the software will function without interruptions or deficiencies, nor that all errors will be rectified. We can charge the cost of rectification in the case of operation errors on the part of the customer or of other causes not to be attributed to us. The above guarantee is not applicable to computer viruses, unless the customer can give evidence of the presence of the virus in the software at the time the relevant software was made available by us.

6.6

Delays in the execution of the contract which are at the risk of the customer shall not suspend the periods mentioned under 6.4

6.7

The guarantee conditions only apply if:

- a. the obligations to pay are met;
- b. the operating instructions are observed;
- c. adequate maintenance takes place;
- d. the customer or a third party does not assemble and/or repair and/or commission the goods delivered without our written permission;
- e. guarantee claims are reported to us in writing immediately after the occurrence of a defect and at the latest two weeks from termination of the guarantee period.

6.8

Parts obtained from third parties are not guaranteed by us more than they are guaranteed to us by our suppliers.

6.9

After termination of the guarantee period we shall not be held liable on whatever ground.

Section 7 - Liability

7.1

We are not liable for:

- a. claims from third parties on account of infringement of their patent rights, licence rights, utility model rights, and other rights of whatever name in connection with the goods supplied by us, if and in so far we might have violated these rights by making use of data furnished to us by the customer for the execution of the order;
- b. indirect damage and/or indirect detriment such as, although not limited to, damage to the business, loss of profits, depreciation in value of assets, material losses, loss of goodwill and/or reputation, suffered by the customer and/or third parties as a result of the performance and/or functioning not being accomplished or accomplished incorrectly or not in time.
- c. if we supply computer equipment within the framework of the contract, we shall not be held liable for damage as a result of the loss of electronic data and information.
- d. any damage or physical injury arising from acts or omissions on the part of the customer or third parties engaged by the customer in contravention of our instructions as to operation, maintenance, foundation and other specific instructions and/or in the case where our goods have been changed in any way without our explicit written permission. The customer shall hold us completely harmless for liability with regard to such damage or physical injury.
- e. errors of deficiencies in whatever sense, if we have not stipulated for a quid pro quo.

If the contract should entirely or partly be dissolved, and there would be evidence of the customer suffering losses on account of some shortcoming to be attributed to us, we shall refund the value of the substituting performance up to a maximum of the value of the non-fulfilled part of the contract.

7.2

After acceptance and takeover in accordance with Section 6 our liability shall maximally be restricted to the guarantee obligations mentioned in Section 6.

Section 8 - Dissolution or voidness of the contract

8.1

After dissolution of the contract or its voidness, through any cause whatsoever, the General Terms and Conditions shall remain valid in so far as they have an independent meaning and/or in so far as they have been stipulated for a settlement of the consequences of the dissolution or voidness, such as more particularly (but not limited to) the stipulations with regard to delivery, penalty clauses, liability, judicial competence and applicable law.

Section 9 - Software utilization rights and property

9.1

If the supply should also comprise software, then we shall grant the customer a non-exclusive, non-transferable utilization right to the software, by which are to be understood computer programs laid down on material which can be read by the computer and appurtenant documentation, including new versions, in so far as the supply of newer versions has been agreed upon.

9.2

The ownership of and all rights of industrial and intellectual property to the software shall at all times be held by us or the sub-contractor to whom we have conceded the right to make the software available to the customer. Any reference to copyright shall not be removed by the customer. The customer is aware of the fact that the software contains confidential information and business secrets of ours or of the sub-contractors and shall take care that software is kept secret and not disclosed to third parties. We shall be free to take technical measures for safeguarding the software.

9.3

For safety reasons the customer is allowed to copy the software not more than twice and the copies shall be provided with the same labels and indications as the original material.

9.4

The customer is not allowed to alienate the software, transfer it as security, modify it, place it at the disposal of third parties for their use or employ it for the benefit of third parties.

9.5

The source code of the software shall not be placed at the disposal of the customer.

9.6

The utilization rights shall be in force from the date of installation and terminate at the time when the equipment is alienated or finally placed out of service.

Section 10 - Force majeure

10.1

By force majeure are to be understood all circumstances (irrespective as to whether or not they were foreseeable at the date of the confirmation of the order) as a result of which parties are, temporarily or not, prevented from meeting their obligations, including circumstances such as strikes, lock-outs, moulding faults, government measures, state of war and/or martial law, fire, natural disasters, epidemics and like circumstances, or circumstances to be ascribed to sub-contractors.

10.2

Force majeure shall be reported by the party concerned not later than fourteen days from the date of its occurrence and shall suspend mutual obligations. If the force majeure should last longer than twelve months, then both parties shall have the right to dissolve the contract.

Section 11 - Assembly, commissioning and service

11.1

If and in so far we have agreed upon carrying out the assembly and/or commissioning work, or supervising and/or giving assistance in the assemblage and/or commissioning or carrying out service work, our General Terms and Conditions for carrying out assemblage, commissioning, and service work shall also be applicable.

Section 12 - Parts

12.1

The present terms and conditions also apply to the supply of parts, except for the explicit deviations therefrom in the following sub-sections.

12.2

As regards our customers we place ourselves under the obligation to supply to them the parts of the new machines supplied by us, notably for a period of six years from the originally agreed date of delivery.

12.3

We have the right to supply parts other than the ones ordered from us, provided that these parts are of at least the same quality as the originally ordered parts.

12.4

The installation of the parts is not included in the price.

12.5

The parts carry a guarantee of three months from the date of despatch ex-factory.

12.6

We are limited to taking back wear parts and consumables and only if they are returned within two months of the shipping date in the original packaging. The return carriage shall be paid by the client.

Section 13 - Packaging materials.

13.1

If packaging materials are provided for the delivery of machines or parts, these materials shall remain our property. Said packaging materials shall be mentioned in our order confirmation.

13.2

Other than packaging mentioned in 13.1, packing materials shall not be taken back.

Section 14 - Disputes

14.1

All disputes shall exclusively be tried by the competent judge in the district of Almelo.

Section 15 - Applicable law

15.1

These terms and conditions fall within the jurisdiction of the law prevailing in the Netherlands.