

General terms and conditions of sale

GENERAL TERMS AND CONDITIONS OF SALE APPLICABLE TO ALL OFFERS BY ORGA BV OF SCHIEDAM, THE NETHERLANDS, HEREINAFTER: "ORGA", FOR THE MANUFACTURING, SALE, DELIVERY, ASSEMBLY, INSTALLATION, REVISION AND/OR REPAIR OF ANY GOODS BY ORGA.

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1. GENERAL

1.1 All offers from ORGA to the other party (hereinafter: the "Buyer") for the manufacturing, sale, delivery, assembly, installation, revision and/or repair of any goods by ORGA (hereinafter: "Offers" and "Goods" respectively) and all relevant agreements with ORGA are subject to these terms and conditions (hereinafter: the "Terms").

1.2 The applicability of general terms and conditions of the Buyer is hereby expressly excluded.

1.3 Provisions which deviate from these Terms can be invoked by the Buyer only if and to the extent that these provisions have been accepted by ORGA in writing.

1.4 If, for any reason whatsoever, any part of these Terms is invalid, the remainder of the same shall remain in force and the parties will, in mutual consultation, provide a regulation in substitution for the invalid stipulation, the purport of which shall be maintained to the maximum extent possible.

1.5 Insofar as these terms and conditions are also drawn up in a language other than English, in the event of any conflict the English text shall always prevail.

1.6 These Terms express and describe Dutch legal concepts in the English language and not in their original Dutch terms. Consequently all the words, terms and expressions used herein shall be construed and interpreted in accordance with Dutch law only. In certain cases and in order to define the term used in the English language, the Dutch legal concept is mentioned in the text between brackets in italics. The use of these or similar terms in any other jurisdiction shall be disregarded.

1.7 ORGA reserves the right to unilaterally change these general terms and conditions at its sole discretion. Such changes shall take effect if and when these have been notified in writing and/or via e-mail to the Buyer. If the Buyer does not wish to accept such change in these Terms, it must inform ORGA of its non-acceptance within fourteen (14) days of receipt of the notice and terminate the agreement, failing which the changes in these Terms and conditions so notified shall take effect.

2. OFFERS, ORDERS AND AGREEMENTS

2.1 All Offers are nonbinding ("*vrijblijvend*"), unless explicitly agreed otherwise in writing.

2.2 All orders and all acceptances of Offers by the Buyer, including verbal orders or acceptances of offers, are irrevocable.

2.3 ORGA shall only be bound when it has accepted an order in writing or has begun implementation. Moreover, ORGA is only bound as accepted in writing. Verbal commitments or agreements by or with its personnel do not bind ORGA except and insofar as ORGA confirms these in writing.

2.4 Amendments in agreements shall be subject to these Terms as if they were separate agreements.

3. DRAWINGS, QUOTES, DOCUMENTS

3.1 All information recorded in catalogues, brochures, price lists and the like shall only be binding for ORGA if and insofar as explicitly agreed in writing. ORGA does not guarantee the accuracy, the completeness, or currency of such information and the Buyer cannot derive any rights from catalogues and other pre-printed or electronic information and/or errors in such.

3.2 All drawings, designs, models, etcetera, which are supplied in connection with the Goods delivered by ORGA and the intellectual and industrial property rights with respect thereto shall remain the exclusive property of ORGA which company shall also be regarded as the maker and designer.

4. PRICE

4.1 Unless expressly indicated or agreed otherwise, the prices quoted by or agreed with ORGA shall be net prices, therefore exclusive of VAT and exclusive of any possible import or export duties, and are based on ex works, Schiedam, the Netherlands (EXW, Incoterms 2010). They shall furthermore not include costs of packing, loading, transport, unloading, insurance, installation, assembly and/or other services.

4.2 If ORGA undertakes to carry out the packing, loading, transport, unloading, insurance, installation, assembly or other services and no price has been expressly agreed in that respect, it shall be entitled to charge the Buyer the actual costs and/or the rates normally used by ORGA.

4.3 Prices set by or agreed to with ORGA are based on the cost price at the time of the offer or acceptance of an order by ORGA. If the cost price increases thereafter, ORGA is entitled to charge the Buyer a corresponding price increase, unless explicitly agreed otherwise ("fixed price").

4.4 If, after the agreement has been concluded, the Buyer desires amendments or additions to the agreement, ORGA shall, in its sole discretion, decide whether to effect or not to effect those. Where ORGA decides to effect those, ORGA shall be entitled to charge all additional costs and ORGA shall also be entitled to set a new delivery time.

5. DELIVERY TIME AND DELIVERY

5.1 The delivery time becomes effective after the conclusion of the agreement, after ORGA has received all documents and data to be provided by the Buyer and after any agreed upon advance payments have been received by ORGA or a security for the benefit of ORGA has been provided.

5.2 In case the Agreement does not specify a delivery time, such delivery time shall be determined by ORGA at its discretion after consulting the Buyer. ORGA shall make every reasonable effort to effect performance at the said date, however, any delivery time specified or determined shall be an estimate only.

5.3 If ORGA expects that the delivery time agreed will be exceeded, it will inform the Buyer hereof as early as possible. A failure to make timely delivery shall not entitle the Buyer to additional or substitute compensation or to non-compliance by him of any of his own obligations arising from the agreement. However, insofar as the failure to provide a timely delivery is the result of a circumstance which can be attributed to ORGA, the Buyer shall be entitled to rescind the agreement by means of a written statement, if and insofar as after the abovementioned failure to deliver ORGA still fails to deliver the Goods within a reasonable period for delivery agreed with the Buyer in writing.

5.4 Delivery time will be extended by the amount of time that the implementation of the agreement is delayed due to force majeure. It shall also be extended by the time that the Buyer is later in the fulfilment of any obligation that follows from these Terms, is agreed to or could reasonably be expected by ORGA. Any additional costs arising from delay which is attributable to the Buyer, shall be borne by the Buyer.

5.5 Subject to the exceptions as referred to in Clause 9.3, the Goods to be delivered by ORGA shall be deemed delivered when they have left the premises of ORGA or of third parties contracted by ORGA for transport to or on behalf of the Buyer, unless expressly agreed otherwise.

5.6 ORGA has the right to deliver in parts. Each partial delivery will be deemed an independent delivery with respect to the applicability of these Terms. ORGA shall be entitled to demand payment for each partial delivery before proceeding with any other. The Buyer's failure to comply with his duty to effect payment (or to do so on time) shall have the effect of suspending ORGA's duty to affect a delivery.

6. OBLIGATIONS OF BUYER

6.1 The Buyer shall, at no charge, provide ORGA timely with any information reasonably required in connection with the agreement, such as - but not limited to - relevant technical documentation, logs, inspection reports and import licences, and shall timely reply to any drawing submitted for approval (by either approving or disapproving such drawings, including remarks and/or proposed additions, changes, etc. where applicable).

6.2 The Buyer warrants that ORGA will be enabled to commence and effect the work to be performed in connection with the agreement outside ORGA's works immediately upon arrival of the Goods and/or ORGA's (and/or its suppliers' and/or subcontractors') personnel and without interruption or hindrance. For this purpose, the Buyer shall, before the arrival of the Goods or such personnel as well as during the performance of the work in connection with the agreement, make all the arrangements necessary - whether or not expressly agreed upon - to ensure that the work can commence at the agreed date and can be carried out without interruption or hindrance. Furthermore, the Buyer shall, at no charge, attend all such tests and/or trials as indicated by ORGA and shall provide ORGA with all assistance ORGA reasonably requires, such as but not limited to skilled and unskilled personnel, the necessary devices, implements and auxiliary means.

6.3 The Buyer warrants that all documents and licenses required in connection with the import and export of the Goods and/or the stay of ORGA's (and/or its supplier's and/or subcontractors') personnel in the country and at the premises of the Buyer shall be available at the time of arrival of the Goods and/or such personnel.

6.4 Where the Buyer breaches any of its obligations set out in the Agreement or otherwise, it shall be in default without the need of a notice of default having to be sent and ORGA shall be entitled to, amongst others, an extension of the delivery time and/or time for performance of the work and reimbursement of all costs and damages incurred.

7. RISK AND TRANSFER OF OWNERSHIP

7.1 The risk in the Goods sold by ORGA shall be for the Buyer as from the moment that the goods are considered as having been delivered as per Clauses 5.5 or 9.3.

7.2 Unless expressly agreed otherwise, loading, dispatching or transport, unloading and insuring of the Goods to be delivered shall be effected for the risk of the Buyer, even if ORGA arranges same.

7.3 All Goods sold by ORGA shall remain the property of ORGA until such time as the Buyer has paid in full all that which is owed to ORGA in connection with the underlying agreement and/or in connection with prior or subsequent agreements of the same nature, including damages, costs and interest ("*eigendomsvoorbewoud*"). The Buyer has no right of retention in respect of those Goods.

7.4 The Buyer grants ORGA irrevocable authority to take such measures which are necessary to maintain the property rights of ORGA.

7.5 The industrial or intellectual property rights to or in connection with the delivered Goods shall remain with ORGA or with third party title owners and shall never be transferred to the Buyer.

8. FORCE MAJEURE

8.1 ORGA shall be entitled to invoke force majeure ("overmacht") if the implementation of the agreement is, in whole or in part, temporarily or not, prevented or impeded by circumstances reasonably beyond its control, including but not limited to forces of nature, decrees of Government, fire, flood, explosion, riot, war, terrorist acts, rebellion, sabotage, site or building blockades, strikes, shortage of materials and/or equipment or inability to obtain delivery thereof, delayed delivery of goods or provision of services ordered by ORGA from third parties, accidents and interruptions of business operations, etc.

8.2 In the event of force majeure on the part of ORGA, its obligations are suspended. If the force majeure continues for a period of more than 90 days, both ORGA and the Buyer are authorised to rescind the non-feasible parts of the agreement by a written declaration, without prejudice to the provisions of Clause 14. Where ORGA has already executed part of an agreement, the Buyer shall pay for any Goods that have been delivered.

9. ACCEPTANCE, INSPECTION

9.1 The Buyer shall be bound to lend its cooperation, without delay, to any inspection or test agreed. If the Buyer fails to lend its cooperation to an inspection or testing in a timely manner or at the time agreed, the Goods shall be deemed to have been approved.

9.2 The Buyer is obligated to take discharge and acceptance at the moment that the Goods delivered are ready for transport or ready to be dispatched.

9.3 If the Buyer does not or does not timely lend its cooperation to inspection, testing or acceptance of the Goods, the Goods shall be deemed as having been delivered, in deviation from the provision of Clause 5, at the time that inspection, testing or acceptance could have been expected or desired by ORGA.

9.4 With respect to the Buyer, ORGA has a right to compensation for damage and costs which are the result of the refusal to effect or the delay in the inspection, testing or acceptance of the Goods.

9.5 Before Goods can be rejected in connection with defects found during inspection or testing, ORGA shall be given the opportunity to repair such defects. If the Buyer makes no use of a possibility for inspection or testing, then the Goods shall be deemed to have been approved.

10. WARRANTY

10.1 ORGA refers to the separate ORGA Warranty Policy for a description of the warranty terms. Unless agreed otherwise in the agreement, the warranty terms mentioned in the ORGA Warranty Policy are exclusively applicable.

11. LIABILITY AND INDEMNIFICATION

11.1 The liability of ORGA in connection with any defects in the Goods it has delivered is limited to the fulfilment of the warranty obligations described in the previous Clause.

11.2 Except in case of intent ("opzet") or wilful recklessness ("bewuste roekeloosheid") of ORGA, ORGA's liability, whether in contract, tort or on any other ground or legal theory, howsoever and whatever the cause thereof, shall be limited to the amount actually paid out by its insurer. For the purpose of this Clause intent or wilful recklessness of ORGA shall mean intent or wilful recklessness of ORGA, its organs ("organen van de vennootschap"), its managers ("leidinggevenden") and of any of its subordinated managers ("leidinggevende ondergeschikten en leidinggevende niet-ondergeschikten") and/or any other person charged with the management of Supplier's business operations).

11.3 In all cases in which ORGA is obligated to pay compensation for damage (and subject to Clause 11.2), this shall never exceed the invoice value of the Goods in connection with which the damage was caused.

11.4 Each claim against ORGA, except those acknowledged by ORGA, shall lapse on account of the mere expiration of a period of twelve (12) months after the claim arose ("vervaltermijn").

11.5 Conditions which limit, exclude or establish liability, which can be invoked against ORGA by suppliers or subcontractors of ORGA in connection with the Goods delivered, can also be invoked by ORGA against the Buyer.

11.6 The employees of ORGA or independent contractors and suppliers brought in by ORGA for the implementation of the agreement, can, with respect to the Buyer, invoke all defences to be derived from the agreement as though they themselves were party to that agreement.

11.7 The Buyer shall hold harmless and indemnify ORGA, its employees and independent contractors and suppliers brought in by it for the implementation of the agreement against each claim by third parties in connection with the implementation of the agreement by ORGA, insofar as these claims are greater than or different from those to which the Buyer is entitled with respect to ORGA.

11.8 With respect to the Goods to be delivered, the Buyer shall strictly observe national and international governmental export, import and user restrictions. It will hold ORGA harmless with respect to damage suffered by ORGA as a result of any violation of these restrictions.

12. PAYMENT AND SECURITY

12.1 Unless expressly agreed otherwise, payment shall be made within thirty (30) days after the invoice date. ORGA, however, shall at all times have the right to demand full or partial payment in advance and/or otherwise obtain adequate security for payment by means of an unconditional, irrevocable on first demand bank guarantee. Refusal by the Buyer to provide the required security gives ORGA the right to suspend its obligations and ultimately, without any notice of default or legal intervention, the right to rescind ("ontbinden") the agreement wholly or partially, without prejudice to ORGA's right to compensation for any damages suffered by it.

12.2 In the event of payments by bank transfer the Buyer must at all times mention the respective invoice numbers. Payments by bank transfer which are not (completely) specified in this manner are first applied against the oldest invoices as well as against the interest due in relation thereto.

12.3 The moment of payment shall be the moment at which the amount due has been fully and irrevocably credited to the account of ORGA. Costs with respect to payment shall be for Buyer's account.

12.4 The Buyer relinquishes any right to withhold or suspend payment or to deduct or setoff amounts charged by and between parties.

12.5 If the Buyer fails to pay any amount due in the manner described above, he shall be in default ("verzuim") without prior notice of default. If the Buyer remains in default with any payment, all other claims from ORGA on the Buyer shall be immediately and totally due and the default becomes effective also with respect to those other claims, and without notice of default. As from the day the Buyer is in default, overdue payment interest at 2% per month shall be due for any part of a month during which the default continues.

12.6 All judicial and extrajudicial costs incurred by ORGA because payment was not made (in good time), shall be paid by the Buyer. The extrajudicial costs are deemed to amount to at least 15% of the amount which is claimed.

13. INTELLECTUAL PROPERTY

13.1 All intellectual property rights and know-how arising from the agreement and all drawings, models, descriptions, information, documents, reports, computer programs, databanks, data and deliverables and other items made, to be delivered, designed, produced or made available under the agreement, including all copy rights, moral rights, related rights, patents, trademarks, service marks, rights in designs, database rights, rights in undisclosed and confidential information (such as knowhow, trade secrets, inventions whether patentable or not) and other similar proprietary rights, whether registered or non-registered or capable of registration, all applications and rights to apply therefore and all renewals, extensions and revivals thereof, wherever in the world any such rights exist or will come into existence, shall be and/or remain exclusively owned by ORGA, may not be copied or otherwise reproduced without ORGA's prior written approval and, except where explicitly agreed otherwise in the agreement, nothing shall be deemed to constitute a transfer of such intellectual property rights and know how.

13.2 Unless otherwise specified in the agreement the Buyer shall have full ownership rights to the deliverables developed by ORGA as part of the work, and the Buyer shall be granted a royalty free, worldwide license to have free use of such deliverables.

14. RESCISSION

14.1 In the event the Buyer fails altogether to perform one or more of its obligations, or fails to do so in a timely or proper manner, is declared bankrupt, requests (temporary) suspension of payments, proceeds to liquidate its company, as well as if its capital is seized in part or in its entirety, ORGA shall, without being held liable for any compensation, be entitled to suspend the implementation of the agreement or to rescind the agreement in part or in its entirety by means of a written statement without prior notice of default or legal intervention, such at its own discretion and always without prejudice to any rights to which it is entitled to compensation of costs, damages and interest.

14.2 The Buyer shall only be entitled to rescind the agreement in the events described in Clauses 5.3 and 8.2 of these Terms and in such cases only after payment of all amounts owed to ORGA at that time, whether or not due and the Buyer waives its rights to terminate ("opzeggen") and/or to rescind the agreement or to have the same terminated and/or rescinded, either in whole or in part, on any other ground whatsoever.

14.3 As far as legally possible, ORGA and the Buyer waive their right to annul ("vernietigen") the agreement or to have the same annulled, either in whole or in part, or to have the consequences of the agreement changed ("in rechte wijziging van de gevolgen vorderen").

15. DISPUTES AND APPLICABLE LAW

15.1 All disputes existing between parties shall be heard exclusively by the Rotterdam District Court, unless ORGA prefers another competent forum.

15.2 The provisions of Clause 14.1 leave intact the right of ORGA to have the dispute resolved by means of arbitration of the International Chamber of Commerce under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrator(s). The place of arbitration will be Amsterdam, the Netherlands. The arbitral procedure shall be conducted in the English language.

15.3 All agreements between ORGA and the Buyer are subject to Dutch law. The stipulations specified in the Convention of International Sale of Goods of 11 April 1980 do not apply on such agreements, nor does any future international regulation concerning the purchase of moveable property and of which parties can make use.