

# General Terms for the Supply of Goods and Services

## Article 1 - Applicability

- 1.1 These general terms apply to all quotations/offers made by Schöck Nederland B.V., hereinafter referred to as the “Contractor”, and to all agreements entered into with the other party, hereinafter referred to as the “Client” and all agreements arising therefrom, which agreements concern the supply of goods and/or services by the Contractor to the Client.
- 1.2 Clauses derogating from these general terms apply only if and in so far as these have been accepted explicitly in writing by the Contractor.
- 1.3 The applicability of any terms/purchase conditions used by the Client is explicitly excluded by the Contractor.

## Article 2 - Quotations/Offers

- 2.1 All quotations made by the Contractor are without obligation and valid for 30 days, unless agreed upon otherwise in writing.
- 2.2 If the Client provides drawings or any other information or data to the Contractor, the Client guarantees their correctness and the Contractor will base its quotations/offers on this information.
- 2.3 Agreements are concluded only once the Contractor has accepted, tacitly or explicitly, the assignment of the Client to supply goods and/or services.
- 2.4 Tacit acceptance as referred to in article 2.3 will be deemed to have occurred if the Client a) has not reacted by regular mail or e-mail to the confirmation of the assignment within ten days after its receipt and/or b) has allowed the Contractor to start performing the work referred to in the confirmation of the assignment and/or c) has made a down payment.

## Article 3 - Prices

- 3.1 The prices included in quotation/offer of the Contractor and all other prices agreed upon between the Contractor and the Client are in case of the supply of goods based on delivery ex works (pursuant to Incoterms 2010). If the agreement or the delivery at issue does not concern cross-border transportation, prices are also based on delivery ex works (“af fabriek”). All prices are in euros and excluding VAT and/or other taxes and/or additional payment obligations, and excluding handling costs and freightages, unless agreed upon otherwise in writing. The packaging and shipping methods – in so far as shipment takes place by the Contractor or a third party on its behalf – are

determined by the Contractor, but are all times at the risk and expense of the Client, in accordance with relevant agreements between the Contractor and the Client. Prices are at all times based on the number of goods and/or services actually supplied and not on the number of goods and/or services included in the quotation/offer, should these numbers deviate.

- 3.2 The Contractor has the right at all times to pass on price increases in cost-determining factors to the Client after timely announcement thereof, also if a fixed price has been agreed upon with the Contractor. The Client is in that case entitled to terminate the agreement within one month after announcement of the price increase by the Contractor, without having the right to base any compensation claim on such a termination. In this case article 14.2 of these general terms also applies.

## Article 4 – Delivery Period and Risk Transfer

- 4.1 The agreed delivery period is approximate and is not to be regarded as a strict deadline. The Contractor is not liable for any damage ensuing from late delivery, unless explicitly agreed otherwise in writing by the Contractor and the Client.
- 4.2 The delivery period indicated by the Contractor commences once the agreement is concluded and once the Contractor has received all information necessary for the performance of the agreement. The delivery period is extended by the period during which the Client remains in default of timely payment, and by the period during which the Contractor has not/not yet received all data, drawings and other information requested that is necessary for the performance of the agreement.
- 4.3 The Contractor has the right to perform the agreement in parts, i.e. the Contractor may supply the goods and/or services to the Client in so far as these are finished or available. In case the agreement is performed in parts, the Contractor has the right to invoice the Client immediately for any goods and/or services delivered.
- 4.4 The delivery of goods by the Contractor is ex works (pursuant to Incoterms 2010). If the agreement or the delivery of goods at issue does not concern cross-border transportation, delivery is also ex works (“af fabriek”). This means that shipment always takes place at the risk and expense of the Client, in accordance with relevant agreements made between the Client and the Contractor.

- 4.5 Any returns of goods by the Client to the Contractor are at the risk and expense of the Client and must at all times be sent postage paid by the Client, stating the reasons of the return by the Client, all this duly observing the relevant stipulations in article 8 of these general terms.

#### **Article 5 – Goods Not Taken Delivery Of**

- 5.1 The Client is obliged to take delivery of the goods purchased within the agreed term. If the goods have not been taken delivery of after expiration of that term, these remain at the disposal of the Client and can be stored at the risk and expense of the Client. In such a case, the Contractor is furthermore entitled to terminate the agreement without notice of default and to demand payment of both the purchase price and any damage suffered, including costs/storage costs and interest, and/or to exercise its authority to sell the goods purchased.

#### **Article 6 – Information and Intellectual Property**

- 6.1 The Contractor retains all copyrights and all intellectual property rights to the quotations/offers made by the Contractor, all designs provided, all illustrations, drawings/technical drawings and descriptions, models and trial models, measurements, calculations and other information prepared by the Contractor and/or provided to the Client, all this in the broadest sense, regardless of any costs invoiced to the Client by the Contractor for the manufacturing thereof, unless the Client and the Contractor have explicitly agreed otherwise in writing.
- 6.2 The Client is explicitly not allowed to multiply, publish or exploit the information referred to in article 6.1 without the explicit consent of the Contractor, all this in the broadest sense. Furthermore, the Client is not allowed to use any trade marks, trade names and/or other intellectual property rights of the Contractor without its prior written consent, including – but not limited to – the trade mark/trade marks included in the quotation/offer. For each breach of this stipulation, the Client is obliged to pay the Contractor a fine of EUR 100,000 per day, without any notice of default being required and without prejudice to the Contractor's rights to claim compensation for the actual damage suffered by the Contractor.
- 6.3 The Client is obliged to return the information provided by the Contractor to the Client as referred to in articles 6.1 and 6.2 within the term set by the Contractor, without withholding any copies thereof. Upon termination of the agreement the Client is obliged to return all information provided immediately to the Contractor,

without withholding any copies thereof. In case of breach of this stipulation the Client must pay a fine of EUR 5,000 per day to the Contractor, without any notice of default being required and without prejudice to the Contractor's rights to claim compensation for the actual damage suffered by the Contractor.

#### **Article 7 - Liability**

- 7.1 The Contractor can only be held liable for direct damage suffered by the Client if the Client proves that this damage is the direct and exclusive consequence of an attributable failure by the Contractor, all this duly observing the stipulations in article 7.2.
- 7.2 The Contractor can never be held liable for any direct damage suffered by the Client and/or third parties which is the result of:
- A. any incorrect or incomplete information provided by the Client prior to, during or after the conclusion of the agreement with the Contractor;
  - B. incorrect or improper use of the goods by the Client and/or third parties in constructions, modes of operation or materials, or any use of the goods by the Client and/or third parties that does not meet the product specifications, installation instructions, building codes, certificates, investigation reports and/or any other technical documentation supplied by the Contractor, improper storage, insufficient maintenance, alterations and/or repairs to the goods by the Client and/or third parties, or any use of the goods by the Client and/or third parties that deviates from the state of technical knowledge at that time;
  - C. defects to the goods which are the result of normal wear and tear;
  - D. a defect to the goods or a shortcoming in the service supplied caused by force majeure. Subject to the statutory provisions, force majeure is understood to mean any circumstance outside the control of the Contractor that prevents, delays or cumbers the performance of the obligations of the Contractor towards the Client, or through which the performance of these obligations cannot/can no longer be reasonably expected from the Contractor.
- 7.3 The Contractor can never be held liable for any indirect damage suffered by the Client and/or third parties, including – but not limited to – consequential loss, trading loss, individual damage, lost profits, business interruption loss, damage to property in the care, custody or control of but not owned by the insured, and damage caused by deliberate intent or recklessness of servants or agents of the Contractor. Damage to property in the care, custody or control

of but not owned by the insured includes – but is not limited to – damage caused by or during the performance of the agreement to items on which work is being carried out or to items situated at or in the vicinity of the work site.

- 7.4 The total direct damage to be compensated by the Contractor is at all times limited to the sum of the goods and/or services supplied under the agreement prior to the damage-causing fact, or if this sum is less, the maximum amount the insurer of the Contractor pays in that specific case. The conditions of insurance of the Contractor are available for inspection by the Client at the offices of the Contractor and can be sent to the Client on written demand.
- 7.5 The Client indemnifies the Contractor against all damage suffered by third parties that is related to the goods and/or services supplied by the Contractor, including – but not limited to – damage resulting from violations of rights of third parties by the Contractor, including – but not limited to – intellectual property rights, and/or damage from product liability resulting from a defect to the goods supplied by the Client to a third party, of which the goods supplied by the Contractor are a part, except if and in so far as the Client proves that the damage was exclusively caused by the goods supplied by the Contractor to the Client.
- 7.6 The Client is at all times responsible and liable for complying with statutory and other licences and regulations, including – but not limited to – building regulations, requirements on design and use and (other) technical requirements or industrial standards, all this in the broadest sense, and in so far as these are related to the goods and/or services supplied by the Contractor under the agreement.
- 7.7 If the Contractor refrains from exercising any of the rights or remedies under these general terms and/or the agreement, the Client cannot construe this as relinquishment of a right or waiver of a remedy by the Contractor, regardless of whether this relates to current or future rights or remedies. Neither the receipt of payments by the Contractor from the Client, nor the reliance of the Client on acts of the Contractor or others on its behalf may be construed as relinquishments or waivers of a right or remedy.
- 7.8 The limitations of liability in these general terms do not apply in case of deliberate intent or recklessness on the part of the Contractor.

#### **Article 8 - Guarantee**

- 8.1 The Contractor ensures that goods and services supplied conform to the agreement.
- 8.2 The goods supplied by the Contractor may devi-

ate from the description in the quotation/offer, if and in so far these are minor deviations in size and weight and/or minor deviations in constructions or parts, which are necessary for a proper performance of the agreement.

- 8.3 If goods are found to be faulty, these must be returned to the Contractor within 3 days, postage paid, at the risk of forfeiting all relevant rights. After the goods have been returned by the Client, the Contractor may choose to:
- replace the goods;
  - repair the goods;
  - send the Client a credit invoice for a proportionate part of the invoice.
- 8.4 The Contractor does not give a guarantee on defects to goods which are the result of circumstances as defined under article 7.2 sub A to D.

#### **Article 9 - Complaints**

- 9.1 The Client can no longer claim that the goods and/or services supplied by the Contractor do not conform to the agreement if the Client has not informed the Contractor of the defect by registered letter within 14 days after the Client discovered the defect or could reasonably have discovered the defect.
- 9.2 Any right or remedy of the Client related to the claim that the goods and/or services supplied do not conform to the agreement will in any case become time-barred six months from the supply of that good or the performance of that service.
- 9.3 In case of goods, the Client's right to submit complaints in any case lapses if the goods have been wholly or partially converted by the Client or resold to third parties.

#### **Article 10 - Payment**

- 10.1 The Client pays for goods and/or services supplied by means of a bank transfer into an account to be nominated by the Contractor.
- 10.2 Unless agreed otherwise, payment takes place within 30 days from the invoice date (net).
- 10.3 Regardless of the agreed payment conditions, the Client is obliged on demand to provide security for the payment that is satisfactory in the opinion of the Contractor. If the Client fails to meet this request within the term set, the Client is immediately in default. In that case, the Contractor has the right to terminate the agreement and to recover any damage suffered and to be suffered from the Client.
- 10.4 The Client's right to settle its claims against the Contractor is excluded, unless in case of liquidation of the Contractor.
- 10.5 The Contractor's full claim for payment by the Client is immediately due and payable when;

- any payment term has been exceeded;
- the Client has been declared insolvent or if it has applied for a suspension of payments order;
- goods or receivables of the Client are attached;
- the business of the Client is dissolved or liquidated.

- 10.6 If payment by the Client has not been made within the agreed payment term, the Contractor has the right to charge interest to the Client. The interest is equal to the statutory interest plus 2% default interest per year. Part of a month will count as a whole month when calculating the interest due. If the Client fails to pay or fails to pay in time, the Contractor is never obliged to continue the supply of goods and/or services to the Client until the Client has made its full and timely payment.
- 10.7 In case of non-payment, the Client must pay to the Contractor 15% extrajudicial collection charges on the principal sum, subject to a minimum of EUR 100, and the reasonable judicial costs incurred, including the costs of legal assistance to be incurred by the Contractor in proceedings.

#### **Article 11 – Retention of Title**

- 11.1 The ownership of the goods supplied by the Contractor passes to the Client once it has met all obligations towards the Contractor pertaining to the supply of goods and/or services.
- 11.2 If the Client resells the goods prior to the transfer of ownership to the Client, the Client will become custodian of the goods on behalf of the Contractor. If the Client resells the goods, it is obliged to inform third parties of the Contractor's retention of title.
- 11.3 As long as the ownership has not passed to the Client, the Client is not allowed to pledge the goods or grant third parties any rights to these goods. If third parties claim any rights on the goods supplied under retention of title, the Client is obliged to inform the Contractor thereof immediately in writing.
- 11.4 If the Client fails to meet its obligations, or if the Contractor has good reasons for assuming that the Client will fail to meet its obligations towards the Contractor, the Contractor has the right to reclaim the goods supplied as its property, either from the Client or from third parties if these have been resold. If the goods have been resold by the Client and have been converted by third parties, the Contractor retains ownership of the converted goods, also if a new item has been created after or as a result of the conversion.

#### **Article 12 – Engineering Work**

- 12.1 Next to supplying goods, the Contractor can also provide services to the Client, including – but not

limited to – engineering work.

- 12.2 Engineering work is understood to include the design, creation and drawing of illustrations, the preparation of drawings/technical drawings and descriptions, models and trial models, measurements and calculations by the Contractor for the benefit of the Client.
- 12.3 In performing the engineering work, the Contractor will endeavour to perform the work to the best of its abilities and will exercise all care which can reasonably be expected from the Contractor.
- 12.4 All stipulations in these general terms apply equally to engineering work or other services and the performance thereof under the agreement between the Client and the Contractor, except for those stipulations which giving their contents specifically refer to the supply of goods.

#### **Article 13 – Fees**

- 13.1 The Contractor has the right to charge a fee for the engineering work by multiplying the time spent on this work under the agreement by the fee per time unit set by the Contractor.
- 13.2 The time spent is understood to include the total number of hours spent by the Contractor on the execution of the work under the agreement and the travel time necessary for the performance of the work. At the request of the Client the Contractor can produce a specification of the time spent.
- 13.3 As of 1 January 2013, the hourly rate for the engineering work is EUR 80, to be increased annually by an indexation set by the Contractor based on the Consumer Price Index (CPI) as established by Statistics Netherlands (CBS), unless the Contractor included a different rate in the quotation/offer.
- 13.4 In addition to the consultancy costs mentioned in article 13.1 above, the Client must pay to the Contractor the additional costs as defined under article 50 paragraph 4 of The New Rules Legal Relationship Client-Architect, Engineer and Consultant DNR 2011. The Contractor also has the right to claim compensation for the cost incurred by the Contractor in engaging third parties for the performance of the agreement.

#### **Article 14 Premature Termination of the Agreement**

- 14.1 The Contractor has the right to terminate the agreement with the Client in case of force majeure and in case of an attributable failure on the part of the Client if the Client does not rectify this failure within a reasonable term after having received notice of default from the Contractor. Furthermore, the Contractor can cancel the agreement prematurely for serious cause. In the aforementioned cases, the Client must observe the intellectual property rights of the Contractor in

full, in accordance with the stipulations in article 6 of these general terms.

14.2 If the Contractor invokes its power to terminate and/or cancel the agreement as defined under article 14.1, the Client is obliged to reimburse to the Contractor:

- the amounts for the stage of the work and/or the goods supplied;
- the reasonable costs resulting from any commitments between the Contractor and third parties for the performance of services and/or the supply of goods under the agreement;
- any additional costs reasonably incurred by the Contractor.

14.3 In case of termination by the Contractor pursuant to an attributable failure by the Client the Contractor is, next to the claims mentioned in article 14.2, entitled to recover the related damage suffered by the Contractor from the Client in full.

#### **Article 15 – Miscellaneous**

15.1 If any stipulation of these general terms is void or voidable, or is declared void according to law, this will not affect the validity or enforceability of other stipulations of these general terms than the void ones. In such a case, the Client and the Contractor will together take all necessary action to ensure the enforceability of these general terms and, if necessary, agree upon an alternative text for the void or voided stipulation. In such situations, the Contractor and the Client will act in the

spirit of the void or voided stipulation as much as possible.

15.2 Without the consent of the Contractor, the Client is not allowed to transfer the rights and obligations under these general terms and/or the agreement to a third party.

15.3 The Contractor is entitled to contract out the agreement or part of the work under the agreement to third parties, on a subcontract basis or otherwise.

15.4 The Client is obliged to maintain secrecy with respect to all company-sensitive or other confidential information it has received from the Contractor during the term of the agreement in writing and orally, both for the duration of the agreement and thereafter, and duly observing the relevant stipulations under article 6 of these general terms.

#### **Article 16 – Applicable Law and Choice of Forum**

16.1 All quotations/offers issued and agreements concluded under these general terms and all agreements deriving therefrom, including these general terms itself, are governed exclusively by Dutch law.

16.2 Only the Civil Court in Zutphen, the Netherlands, has jurisdiction on disputes, unless this is contrary to mandatory law. The Contractor has the right to derogate from this rule of jurisdiction and may apply statutory rules of jurisdiction.