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General Terms and Conditions of Sale and Delivery of Algemene Brancheverenigging VHS (VHS)

filed with the Registry of the Court of The Hague on 8 January 2020 under number 1/2020

Article I General

1. These General Terms and Conditions of Delivery apply to all offers and agreements for the provision of goods and/or services by the contractor. All provisions of these terms and conditions shall be effective between the parties, subject to any express written agreements to the contrary between the parties. Any reference by the client to its own terms and conditions of purchase or other terms and conditions is expressly rejected by the contractor.
2. In these terms and conditions, the terms below are defined as follows:
   - product: goods, as well as services, such as maintenance, advice and inspection;
   - written/in writing: through a document signed by both parties or by letter, fax or email or any other technical method agreed by the parties;
   - the contractor: the party who refers to these terms and conditions in his quotation and/or order confirmation;
   - the client: the party to whom the quotation and/or order confirmation is addressed;
3. In these terms and conditions, the definition of the term below will also include:
   - service: contracting work.

Article II Offer

1. Any offer made by the contractor shall be non-binding.
2. Information stated in catalogues, illustrations, drawings, specifications of dimensions and weights, etc. shall only be binding if and when it is expressly included in a contract signed by the parties or in an order confirmation signed by the contractor.
3. The offer issued by the contractor, as well as the drawings, calculations, software, descriptions, models, tools et cetera produced or provided by him, shall remain his property, even if respective costs have been charged. The intellectual property rights to any information vested in any of the above or that form the basis of the manufacturing and construction methods, products, etc., shall exclusively be reserved to the contractor, even if respective costs have been charged. The client guarantees that said information, except for the performance of the agreement, shall not be copied, shown to third parties, disclosed or used without the contractor's written consent.

Article III Agreement

1. If the agreement is entered into in writing, it shall take effect from the day when the contractor signs the contract or from the date the contractor sends the written confirmation of the order.
2. Any work delivered and/or installed by the contractor in consultation with the client during the performance of the contract, whether or not recorded in writing, in excess of the quantities expressly specified in the contract or the order confirmation, or any work performed in excess of the work expressly specified in the contract or the order confirmation, shall be considered additional work.
3. Verbal commitments made by, and agreements reached with the contractor's employees shall only be binding on the contractor if confirmed by the contractor in writing.

Article IV Price

1. The prices stated in the quotation or order confirmation are exclusive of VAT and are based on the cost prices applicable at the time the quotation or order confirmation was issued.
2. If, after the date when the agreement is concluded, one or more of the cost factors should increase – even if this is due to foreseeable circumstances – the contractor will be entitled to increase the agreed price accordingly.
3. Prices are based on ex-works delivery in the Netherlands, on the proviso that, the contractor will charge a minimum surcharge of 10 euros for handling costs for orders of less than 500 euros net (excluding VAT and any separately charged packaging), while freight costs will be charged separately.
4. Quoted prices are exclusive of VAT and any separately charged costs for packaging. Packaging cannot be returned.
5. Costs of loading, unloading and transport of raw materials, semi-finished products, models, tools and other items provided by the client are not included in the price and will be charged separately. Any respective costs paid by the contractor shall be regarded as an advance payment to be borne by the client.

Article V Delivery

1. Delivery takes place ex-works in accordance with the Incoterms in force on the date of delivery.
2. The parties may agree to deliver orders in instalments. In that case, the contractor will have the right to submit invoices for such partial deliveries.
3. If the client fails to fulfil, or fails to fulfil properly or in a timely manner, any obligation arising for him from the agreement concluded with the contractor or from a related agreement, or in the event that he has any reasonable grounds to

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fear that the client is or will be unable or unwilling to fulfil his contractual obligations in respect of the contractor, the contractor shall be entitled, without notice of default or court intervention, either to suspend the performance of the agreement concluded with the client or to terminate it in whole or in part, without being liable for any compensation and without prejudice to any further rights to which he is entitled.

4. In the event of suspension pursuant to paragraph 3, the contractor shall be entitled to store the raw materials, materials, parts and other items purchased, reserved, processed and manufactured by him for the performance of the agreement at the client's expense and risk. In the event of termination pursuant to paragraph 3, the preceding sentence shall apply mutatis mutandis, on the proviso that the contractor may, instead of storage, also opt for sale or destruction at the client's expense. In the event of suspension or termination pursuant to paragraph 3, the contractor shall be entitled to full compensation, however, he shall not be liable for any compensation.

Article VI Delivery time

1. The delivery period commences from the date of written acceptance of the order. If, by that time, the client has not provided all the information required for the performance of the order, the delivery period shall not commence until all the required information has been provided.
2. Without prejudice to the provisions elsewhere in these terms and conditions regarding the extension of the delivery period, the delivery period shall be extended by the duration of any delay on the part of the contractor caused by the client's failure to fulfil any obligation arising from the agreement or to provide the cooperation that is required of him in relation to the performance of the agreement.
3. For the purposes of the delivery time, products shall be deemed to have been delivered when they are ready for dispatch and the client has been notified accordingly in writing.
4. Exceeding the delivery time does not entitle the client to full or partial termination of the contract, nor to any compensation or non-performance of any obligation that may arise for him from any contract concluded with the contractor, unless the delay exceeds 16 weeks or, according to notification from the contractor, will exceed 16 weeks. In the event of the latter-mentioned delay, the client may, to the exclusion of other rights, terminate the agreement by giving written notice to the contractor and shall at such time, where applicable, be entitled to a refund of the price (or part of the price) already paid for the product and to compensation for any loss suffered by him, up to 15 per cent maximum of the price agreed for the product to be delivered. Unless the client exercises the aforementioned right of termination, exceeding the delivery time – for any reason whatsoever – does not entitle the client to perform or cause to perform work with respect to the execution of the agreement without a court order.

Art. VII Transfer of Risk and Title

1. Immediately after the product is deemed to have been delivered within the meaning of Article VI(3), the client shall bear the risk for all direct and indirect loss that may be caused to or by this product, except if the loss is attributable to wilful misconduct or deliberate recklessness on the part of the contractor's management staff. If, after being given notice of default, the client continues to be in default of taking delivery of the product, the contractor shall be entitled to charge the resulting costs to the client.
2. Without prejudice to the provisions of paragraph 1 and Article VI, paragraph 3, of the title to the products delivered by the contractor to the client shall only pass to the client once all amounts due by the client to the contractor in respect of deliveries or work, including interest and costs, have been paid in full to the contractor. The client will nevertheless be entitled to sell and supply the products to third parties in the ordinary business operations.
3. The contractor shall be entitled to unimpeded access to the product(s). The client shall fully cooperate with the contractor in order to enable the contractor to exercise the retention of title set out in paragraph 2 by taking back the product(s).

Article VIII Complaints and claims

Complaints or claims regarding shortages, incorrect deliveries and externally visible defects must be submitted within 14 days after the client received the products. If this period should be exceeded, any claim against the contractor with respect to this shall lapse.

Article IX Payment

1. Payment must be made within one month after the invoice date without any deduction, offsetting amounts or suspension.
2. If the client fails to pay within the agreed time, he shall be deemed to be in default by operation of law and the contractor shall be entitled, without any notice of default, to charge interest from the due date at a rate of 3 percentage points above the statutory interest rate applicable in the Netherlands, as referred to in Book 6, Sections 119a and 120(2) of the Dutch Civil Code, as well as all judicial and extrajudicial costs incurred for the collection of his claim.

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Article X Guarantee

1. The contractor shall replace or repair free of charge, which is at its own discretion, any products with not externally visible defects, where the client proves that these exclusively or predominantly directly result from the use of defective materials, faulty workmanship or an error in the construction applied by the contractor, subject to the limitations set out in the following paragraphs.
2. The obligation set out in paragraph 1 of this Article is limited to the defects specified in that paragraph, which have occurred within one year after delivery within the meaning of Article VI, paragraph 3. A new guarantee period of 12 months shall apply to repairs carried out and for repaired and delivered replacement parts, all in accordance with paragraph 1, on the proviso that any guarantee shall lapse as soon as 18 months have elapsed since the delivery of the product in accordance with Article VI, paragraph 3.
3. Notification of defects, as referred to in paragraph 1, must be made in writing to the contractor without delay, and in any event within 14 days of a defect occurring and no later than 14 days after the period referred to in paragraph 2. If this period is exceeded, any obligation on the part of the contractor under paragraph 1 shall lapse. Legal proceedings relating to the defects in question must be brought within one year after their timely notification, failing which the right to claim shall lapse.
4. Products in respect of which a claim under the guarantee is made must be sent to the contractor carriage paid following consultation with the contractor. If the contractor supplies new products in fulfilment of his guarantee obligation, the products originally supplied shall remain or become his property.
5. The guarantee does not cover defects that wholly or partly result from:
   a. the failure to observe operating and maintenance instructions or result from use other than the intended normal use;
   b. normal wear and tear;
   c. assembly/installation or repair by the client or by third parties;
   d. the application of any government regulations regarding the type or quality of the materials used;
   e. materials or items used in consultation with the client;
   f. materials or items provided by the client to the contractor for processing;
   g. materials, items, methods and constructions, if applied on the express instruction of the client, as well as materials and items supplied by or on behalf of the client;
   h. parts procured by the contractor from third parties, where the third party has not provided a guarantee to the contractor or the guarantee provided by the third party has expired.

   Defects resulting from improper transport, storage, installation or from alterations made by the client or third parties without the contractor's written consent are also excluded from the guarantee.
6. Unless otherwise agreed, a guarantee will be provided for repair, overhaul and maintenance work and similar services carried out by the contractor outside the scope of the guarantee, only in respect of the soundness of the execution of the assigned work, for a 6 months' guarantee period. This guarantee constitutes the contractor's sole obligation to re-perform the relevant work, to the extent that it is defective, in the event of such a defect. In that case, a new 6 months' guarantee period of 6 months shall apply, on the proviso that any guarantee shall be cancelled once 12 months have elapsed since the original work was performed.
7. No guarantee will be provided for inspections, consultancy and similar services performed by the contractor.
8. If the client fails to fulfil, or fails to fulfil properly or in a timely manner, any obligation arising for him from the agreement concluded with the contractor or from any related agreement, the contractor shall not be bound by any guarantee – under any title whatsoever – in respect of any of these agreements. If the client proceeds with or causes to proceed with any dismantling, repair or other work on the product without the contractor's prior written approval, any claim under the guarantee shall lapse.
9. The use of parts other than those supplied by the contractor shall invalidate any claim under the guarantee.
10. The alleged failure by the contractor to fulfil his guarantee obligations does not release the client from the obligations arising for it from any agreement concluded with the contractor.

Article XI Liability

1. The contractor's liability under the agreement is limited to the fulfilment of the guarantee obligations described in Article X of these terms and conditions. If the contractor has failed to fulfil his obligations arising from Article X within a reasonable period, the client may, through a written notice, set a final and reasonable deadline for the contractor to fulfil these obligations. If the contractor fails to fulfil his obligations within this final deadline the client may, at the contractor's expense and risk, carry out the necessary repair work by himself or cause it to be carried out by a third party. If repair work is in that way successfully carried out by the client or by a third party, the contractor shall be released from all liability for the defect in question upon reimbursement of the reasonable costs incurred by the client, on the proviso that these costs shall not exceed 15 per cent of the price agreed for the delivered product.

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2. If the repair work referred to in paragraph 1 should not be carried out successfully,
a) the client will be entitled to a reduction in the price agreed for the delivered product in proportion to the reduction in the product's value, provided that this reduction shall not exceed 15 per cent of the price agreed for the delivered product, or
b) if the defect is found to be serious to the extent that the client no longer has any interest in using the product, the client may terminate the contract by giving written notice to the contractor. The client will at such time be entitled to a refund of the price paid for the delivered product and to compensation for the loss suffered, up to a maximum of 15 per cent of the agreed price for the delivered product.
3. Except for intent or wilful recklessness on the part of the contractor's management staff and subject to the provisions of Art. VI(4), in Article X and in paragraphs 1 and 2 of this Article, all liability of the contractor for defects in the delivered product and with respect to the delivery, such as for loss caused by exceeding the delivery time and from non-delivery, for loss resulting from liability in respect of third parties, for business interruption, consequential loss and indirect loss, assembly and disassembly costs, and for loss resulting from any unlawful act or omission on the part of (employees of) the contractor, shall be excluded.
4. The contractor therefore bears no liability either for infringement of patents, licences or other third-party rights, nor for damage to or loss, for any reason whatsoever, of raw materials, semi-finished products, models, tools and other items provided by the client.
5. The client undertakes to indemnify the contractor and hold the contractor harmless against all claims by third parties for compensation of loss caused by or with respect to the delivered product.

Article XII Force Majeure

1. In these General Terms and Conditions, 'force majeure' means any circumstance beyond the contractor's control – even if it was foreseeable at the time of the conclusion of the agreement – which permanently or temporarily prevents performance of the agreement, as well as, where this has not yet been covered, war, threat of war, civil war, riots, strikes, lockouts, transport problems, fire, cybercrime and other causes of serious disruption to the contractor's business or that of its suppliers.
2. In the event of force majeure, the contractor will be entitled either to suspend performance of the agreement or to terminate the agreement in whole or in part, without the client being entitled to claim any compensation as a result.

Article XIII Governing law and disputes

1. All agreements to which these terms and conditions apply in whole or in part shall be governed by Dutch law.
2. Where disputes arising from an agreement, which is in whole or in part governed by these terms and conditions, must be settled by the court due to the type of dispute or the amount claimed, the court of the district where the contractor is established shall have exclusive jurisdiction to issue a decision.

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