

# **General Conditions “Van Niekerk Engineering”**

## **Article 1 General**

These terms and conditions apply to every offer, quotation and agreement between Van Niekerk Engineering, hereinafter referred to as: "Contractor", and a Client to which the Contractor has declared these terms and conditions applicable, insofar as the parties have not explicitly deviated from these terms and conditions\* in writing.

\*The present terms and conditions also apply to actions of third parties engaged by the Contractor in the context of the/an assignment.

These general terms and conditions are also written for the Contractor.

The applicability of any purchase or other conditions of the Client is expressly rejected.

If one or more provisions in these general terms and conditions are at any time wholly or partially null and void or should be annulled, then the other provisions in these general terms and conditions remain fully applicable. The Contractor and the Client will then enter into consultation in order to agree on new provisions to replace the void or annulled provisions, whereby the purpose and purport of the original provisions will be taken into account as much as possible.

If there is uncertainty regarding the interpretation of one or more provisions of these general terms and conditions, the explanation must take place 'in the spirit' of these provisions.

If a situation arises between the parties that is not regulated in these general terms and conditions, this situation must be assessed in the spirit of these general terms and conditions.

If the Contractor does not always require strict compliance with these terms and conditions, this does not mean that the provisions thereof do not apply, or that the Contractor would in any way lose the right to demand strict compliance with the provisions of these terms and conditions in other cases.

## **Articel 2 Quotations, offers**

All quotations and offers of the Contractor are without obligation, unless a period for acceptance has been set in the quotation. If no acceptance period has been set, the offer will always expire after 14 days.

The Contractor cannot be held to its quotations or offers if the Client can reasonably understand that the quotations or offers, or a part thereof, contain an obvious mistake or error.

The prices stated in a quotation or offer are exclusive of VAT and other government levies, any costs to be incurred in the context of the agreement, including travel and accommodation, shipping and administration costs, unless otherwise indicated.

If the acceptance (whether or not on minor points) deviates from the offer included in the quotation or the offer, the Contractor is not bound by it. The agreement will then not be concluded in accordance with this deviating acceptance, unless the Contractor indicates otherwise.

A composite quotation does not oblige the Contractor to perform part of the assignment against a corresponding part of the specified price. Offers or quotations do not automatically apply to future orders.

## **Acticle 3 Contract duration, execution periods, transfer of risk, execution and amendment of the agreement, price increase**

The agreement between the Contractor and the Client is exclusively an obligation of best efforts and is entered into for a definite period of time, unless the nature of the agreement dictates otherwise or if the parties expressly agree otherwise in writing.

If a term has been agreed or specified for the execution of certain activities or for the delivery of certain goods, this is never a deadline. If a term is exceeded, the Client must therefore give the

Contractor written notice of default. The Contractor must be offered a reasonable period of time to still implement the agreement.

The Contractor will execute the agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship. All this on the basis of the state of science known at that time.

The Contractor has the right to have certain work carried out by third parties. The applicability of Articles 7:404, 7:407(2) and 7:409 of the Dutch Civil Code is expressly excluded. If work is carried out by the Contractor or third parties engaged by the Contractor in the context of the assignment at the location of the Client or a location designated by the Client, the Client shall provide the facilities reasonably desired by those employees free of charge.

The Contractor is entitled to execute the agreement in different phases and to invoice the part thus executed separately.

If the agreement is executed in phases, the Contractor may suspend the execution of those parts that belong to a subsequent phase until the Client has approved the results of the preceding phase in writing.

The Client shall ensure that all data, of which the Contractor indicates that they are necessary or of which the Client should reasonably understand that they are necessary for the execution of the agreement, are provided to the Contractor in a timely manner. If the information required for the execution of the agreement has not been provided to the Contractor in time, the Contractor has the right to suspend the execution of the agreement and / or to charge the Client for the additional costs resulting from the delay in accordance with the then usual rates. The execution period does not start until after the Client has made the data available to the Contractor.

The Contractor is not liable for damage, of whatever nature, because the Contractor has assumed incorrect and / or incomplete information provided by the Client.

If during the execution of the agreement it appears that it is necessary to change or supplement it for a proper execution thereof, the parties will adjust the agreement in a timely manner and in mutual consultation. If the nature, scope or content of the agreement, whether or not at the request or instruction of the Client, of the competent authorities, etc., is changed and the agreement is thereby changed in qualitative and / or quantitative terms, this may have consequences for what was originally agreed. As a result, the originally agreed amount can also be increased or decreased. The Contractor will quote as much as possible in advance. By a change to the agreement, the originally stated period of execution can also be changed. The Client accepts the possibility of changing the agreement, including the change in price and term of execution.

If the agreement is amended, including a supplement, the Contractor is entitled to implement it only after approval has been given by the person authorized within the Contractor and the Client has agreed to the price and other conditions specified for the execution, including the time to be determined at that time at which it will be implemented. The non-execution or non-immediate execution of the amended agreement does not constitute a breach of contract on the part of the Contractor and is not a reason for the Client to terminate or cancel the agreement.

Without being in default, the Contractor may refuse a request to change the agreement if this could have qualitative and / or quantitative consequences, for example for the work to be performed or goods to be delivered in that context.

If the Client should be in default in the proper fulfillment of what he is obliged to do towards the Contractor, the Client is liable for all damage on the part of the Contractor directly or indirectly caused as a result.

If the Contractor agrees a fixed fee or fixed price with the Client, the Contractor is nevertheless entitled at all times to increase this fee or price without the Client being entitled to dissolve the agreement for that reason, if the increase in the price results from a power or obligation under the laws or regulations or finds its cause in an increase in the price of raw materials, wages, etc. or on other grounds that were not reasonably foreseeable when entering into the agreement.

If the price increase, other than as a result of an amendment to the agreement, exceeds 10% and takes place within three months after the conclusion of the agreement, then only the Client who is

entitled to invoke Title 5 Section 3 of Book 6 of the Dutch Civil Code is entitled to dissolve the agreement by means of a written statement, unless the Contractor is still prepared to execute the agreement on the basis of the originally agreed amount; if the price increase results from a power or an obligation resting on the Contractor pursuant to the law; if it is stipulated that the delivery will take place more than three months after the conclusion of the agreement; or, in the case of delivery of an item, if it is stipulated that the delivery will take place more than three months after the purchase.

## **Article 4 Suspension, dissolution and premature termination of the agreement**

The Contractor is entitled to suspend the fulfilment of the obligations or to dissolve the agreement if the Client does not, not fully or not timely fulfil the obligations under the agreement, after the conclusion of the agreement give the Contractor good reason to fear that the Client will not comply with the obligations, if the Client has been requested at the conclusion of the agreement to provide security for the satisfaction of his obligations under the agreement and this security is not forthcoming or insufficient or if due to the delay on the part of the Client, the Contractor can no longer be required to fulfil the agreement under the originally agreed conditions.

Furthermore, the Contractor is entitled to dissolve the agreement if circumstances arise of such a nature that compliance with the agreement is impossible or if circumstances otherwise arise that are of such a nature that unaltered maintenance of the agreement cannot reasonably be required of the Contractor.

If the agreement is dissolved, the Contractor's claims against the Client are immediately due and payable. If the Contractor suspends the fulfilment of the obligations, it retains its rights under the law and the agreement.

If the Contractor proceeds to suspension or dissolution, it is in no way obliged to compensate damage and costs incurred in any way as a result.

If the dissolution is attributable to the Client, the Contractor is entitled to compensation for the damage, including the costs, arising directly and indirectly as a result. If the Client fails to fulfil its obligations arising from the agreement and this non-performance justifies dissolution, the Contractor is entitled to dissolve the agreement immediately and with immediate effect without any obligation on its part to pay any compensation or compensation, while the Client is obliged, on account of non-performance, to pay compensation or compensation.

If the agreement is terminated prematurely by the Contractor, the Contractor will, in consultation with the Client, ensure the transfer of work still to be performed to third parties. This unless the termination is attributable to the Client. If the transfer of the work entails additional costs for the Contractor, these will be charged to the Client. The Client is obliged to pay these costs within the aforementioned period, unless the Contractor indicates otherwise.

In the event of liquidation, of (application for) suspension of payment or bankruptcy, of attachment - if and insofar as the attachment has not been lifted within three months - at the expense of the Client, of debt rescheduling or any other circumstance as a result of which the Client can no longer freely dispose of his assets, the Contractor is free to terminate the agreement immediately and with immediate effect or to cancel the order or agreement, without any obligation on his part to pay any compensation or compensation.

In that case, the Contractor's claims against the Client are immediately due and payable. If the Client cancels an order placed in whole or in part, the work that was performed and the goods ordered or prepared for this purpose, plus any supply, removal and delivery costs thereof and the working time reserved for the execution of the agreement, will be charged in full to the Client.

## **Article 5 Force majeure**

The Contractor is not obliged to fulfil any obligation towards the Client if it is prevented from doing so as a result of a circumstance that is not due to fault, and is not for its account under the law, a legal act or generally accepted views.

In these general terms and conditions, force majeure is understood to mean, in addition to what is understood in the law and jurisprudence in this regard, all external causes, foreseen or unforeseen, over which the Contractor cannot exercise any influence, but as a result of which the Contractor is unable to fulfil its obligations. This includes strikes in the company of the Contractor or third parties. The Contractor also has the right to invoke force majeure if the circumstance that prevents (further) performance of the agreement occurs after the Contractor should have fulfilled its obligation.

The Contractor may suspend the obligations under the agreement during the period that the force majeure continues. If this period lasts longer than 1 week, then each of the parties is entitled to dissolve the agreement, without obligation to pay compensation for damage to the other party. Insofar as the Contractor has already partially fulfilled its obligations under the agreement at the time of the occurrence of force majeure or will be able to fulfil them, and the part fulfilled or to be fulfilled has independent value, the Contractor is entitled to invoice the already fulfilled or to be fulfilled part separately. The Client is obliged to pay this invoice as if there were a separate agreement.

## **Article 6 Payment and collection costs**

Payment must always be made within 2 weeks after the invoice date, in a manner to be indicated by the Contractor in the currency in which the invoice was made, unless otherwise indicated in writing by the Contractor.

The Contractor is entitled to invoice periodically.

If the Client fails to pay an invoice on time, the Client is in default by operation of law. The Client then owes the statutory interest. The interest on the due amount will be calculated from the moment that the Client is in default until the moment of payment of the full amount due. The Contractor has the right to have the payments made by the Client go first of all to reduce the costs, then to reduce the interest that has fallen due and finally to reduce the principal sum and the current interest. The Contractor may, without thereby being in default, refuse an offer for payment if the Client designates a different order for the allocation of the payment. The Contractor may refuse full repayment of the principal sum if the outstanding and current interest and collection costs are not also paid.

The Client is never entitled to set off the amount owed by him to the Contractor. Objections to the amount of an invoice do not suspend the payment obligation. The Client who is not entitled to invoke section 6.5.3 (Articles 231 to 247 book 6 of the Dutch Civil Code) is also not entitled to suspend the payment of an invoice for any other reason.

If the Client is in default or in default in the (timely) fulfilment of its obligations, then all reasonable costs for obtaining payment out of court will be borne by the Client. The extrajudicial costs are calculated on the basis of what is customary in Dutch debt collection practice, currently the calculation method according to Rapport Voorwerk II. However, if the Contractor has incurred higher costs for collection that were reasonably necessary, the actual costs incurred will be eligible for reimbursement. Any judicial and execution costs incurred will also be recovered from the Client. The Client also owes interest on the collection costs due.

## **Article 7 Retention**

The goods delivered by the Contractor in the context of the agreement remain the property of the Contractor until the Client has properly fulfilled all obligations under the agreement(s) concluded with the Contractor.

The goods delivered by the Contractor, which pursuant to paragraph 1. is subject to retention of title, may not be resold and may never be used as a means of payment. The Client is not authorized to pledge or encumber in any other way the subject of the retention of title.

The Client must always do everything that can reasonably be expected of him to secure the Contractor's property rights.

If third parties seize the goods delivered under retention of title or wish to establish or assert rights thereon, the Client is obliged to immediately inform the Contractor thereof. Furthermore, the Client undertakes to insure the goods delivered under retention of title and to keep them insured against fire, explosion and water damage as well as against theft and to make the policy of this insurance available for inspection to the Contractor on first request. In the event of a possible payment of the insurance, the Contractor is entitled to these tokens.

To the extent necessary, the Client undertakes towards the Contractor in advance to cooperate with all that may (prove to be) necessary or desirable in that context.

In the event that the Contractor wishes to exercise its property rights referred to in this article, the Client shall give unconditional and irrevocable permission in advance to the Contractor and third parties to be designated by the Contractor to enter all those places where the Contractor's property is located and to take them back.

## **Article 8 Guarantees, investigation and complaints, limitation period**

The goods to be delivered by the Contractor meet the usual requirements and standards that can reasonably be set at the time of delivery and for which they are intended for normal use in the Netherlands. The guarantee mentioned in this article applies to goods that are intended for use within the Netherlands. In the event of use outside the Netherlands, the Client must verify whether the use thereof is suitable for use there and meet the conditions set therein. In that case, the Contractor may set other guarantee and other conditions with regard to the goods to be delivered or the work to be carried out.

The guarantee referred to in paragraph 1 of this article applies for a period of 1 year after delivery, unless the nature of the delivered goods dictates otherwise or the parties have agreed otherwise. If the guarantee provided by the Contractor concerns an item that was produced by a third party, the guarantee is limited to that provided by the producer of the item for it, unless otherwise stated.

Any form of guarantee will lapse if a defect has arisen as a result of or results from improper or improper use thereof or use after the expiry date, incorrect storage or maintenance thereof by the Client and / or by third parties when, without written permission from the Contractor, the Client or third parties have made or attempted to make changes to the item, other items were attached to it that do not need to be attached to it or if they were processed or processed in a manner other than the prescribed manner.

The Client is also not entitled to a warranty if the defect is caused by or is the result of circumstances over which the Contractor cannot exert any influence, including weather conditions (such as, but not limited to, extreme rainfall or temperatures) et cetera.

The Client is obliged to examine the delivered goods (or have them examined) immediately at the moment that the goods are made available to him or the relevant work has been carried out. In doing so, the Client must investigate whether the quality and/or quantity of the delivered goods corresponds to what has been agreed and meets the requirements that the parties have agreed in this respect. Any visible defects must be reported to the Contractor in writing within 1 week after delivery. Any non-visible defects must be reported to the Contractor in writing immediately, but in any case no later than fourteen days after discovery thereof. The report must contain as detailed a description as possible of the defect, so that the Contractor is able to respond adequately. The Client must give the Contractor the opportunity to investigate a complaint or have it investigated.

If the Client complains in time, this does not suspend his payment obligation. In that case, the Client also remains obliged to purchase and pay for the otherwise ordered goods and what he has commissioned the Contractor to do.

If a defect is reported later, the Client is no longer entitled to repair, replacement or compensation. If it is established that an item is defective and a complaint has been made in time, the Contractor will ensure that the defective item is repaired within a reasonable period of time after written notification of the defect by the Client, at the discretion of the Contractor.

If it is established that a complaint is unfounded, the costs incurred as a result, including the investigation costs, on the part of the Contractor as a result, will be fully borne by the Client. After expiry of the warranty period, all costs for repair or replacement, including administration, shipping and call-out costs, will be charged to the Client. Contrary to the statutory limitation periods, the limitation period of all claims and defences against the Contractor and the third parties involved by the Contractor in the execution of an agreement is 2 months.

## **Article 9 Liability**

If the Contractor should be liable, this liability is limited to what is regulated in this provision. The Contractor is not liable for damage, of whatever nature, caused by the Contractor assuming incorrect and / or incomplete information provided by or on behalf of the Client.

If the Contractor should be liable for any damage, the Contractor's liability is limited to a maximum of once the invoice value of the order, at least to that part of the order to which the liability relates. The Contractor's liability is in any case always limited to the amount of the payment of its insurer, where applicable.

The Contractor is only liable for direct damage.

Direct damage is exclusively understood to mean the reasonable costs for determining the cause and extent of the damage, insofar as the determination relates to damage within the meaning of these terms and conditions, any reasonable costs incurred to have the contractor's defective performance comply with the agreement, insofar as these can be attributed to the Contractor and reasonable costs, made to prevent or limit damage, insofar as the Client demonstrates that these costs have led to the limitation of direct damage as referred to in these general terms and conditions. The Contractor is never liable for indirect damage, including consequential damage, loss of profit, missed savings and damage due to business stagnation.

The limitations of liability included in this article do not apply if the damage is due to intent or gross negligence on the part of the Contractor or its managerial subordinates.

## **Article 10 Protection**

The Client indemnifies the Contractor against any claims from third parties who suffer damage in connection with the execution of the agreement and the cause of which is attributable to parties other than the Contractor. If the Contractor should be held liable by third parties for this reason, the Client is obliged to assist the Contractor both outside and in court and to immediately do everything that may be expected of him in that case. If the Client fails to take adequate measures, the Contractor is entitled, without notice of default, to do so itself. All costs and damage on the part of the Contractor and third parties arising as a result are entirely at the expense and risk of the Client.

## **Article 11 Intellectual property**

The Contractor reserves the rights and powers that belong to it on the basis of the Copyright Act and other intellectual laws and regulations. The Contractor has the right to use the knowledge gained by the execution of an agreement on its side for other purposes, insofar as no strictly confidential information of the Client is brought to the knowledge of third parties.

## **Article 12 Applicable law and disputes**

All legal relationships to which the Contractor is a party are exclusively governed by Dutch law, even if an obligation is fully or partially performed abroad or if the party involved in the legal relationship is domiciled there. The applicability of the Vienna Sales Convention is excluded.

The court in the contractor's place of business or region has exclusive jurisdiction to hear disputes, unless the law prescribes otherwise. Nevertheless, the Contractor has the right to submit the dispute to the competent court according to the law. The parties will only appeal to the court after they have made every effort to settle a dispute by mutual agreement.

### **Article 13 Location and modification of general terms and conditions**

These terms and conditions have been filed with the Chamber of Commerce.

The most recently filed version or the version as it applied at the time of the establishment of the legal relationship with the Contractor always applies.

The Dutch text of the general terms and conditions is always decisive for the interpretation thereof.