

**Article 1. General**

1. These conditions apply to each and every offer, quotation and agreement between EMERGO METAL TREATMENT, hereafter named: "Supplier", and a Counterparty, to which the Supplier has declared that these terms and conditions are applicable, in so far as parties have not deviated from the present terms and conditions expressly and in writing.
2. The present terms and conditions shall also apply to all agreements with Supplier, the execution of which calls for the services of third parties.
3. The pertinence of potential purchase or other conditions of the Counterparty are explicitly refused.
4. If one or more stipulations in these general conditions, at any moment, fully or partially be made void or destroyed, then the remainder determined in these general conditions shall remain fully applicable. Supplier and the Counterparty shall then go into consultation concerning new stipulations as replacement for those made null and void, whereby as far as possible, the purpose and intention of the original stipulations shall be observed.
5. If the Supplier does not always require strict compliance to these conditions, it does not mean that the provisions do not apply, nor that the Supplier, to any extent whatsoever would lose the right to require strict compliance to these conditions.

**Article 2. Quotations and offers**

1. All quotes and offers from the Supplier are not binding, unless the offer contains an acceptance period. A quotation or offer expires if the product concerned has become unavailable in the meantime.
2. The Supplier cannot be held liable for the quotes or offers in the event that the Counterparty, in all reasonableness can understand, that the quotes or offers, or any part thereof, contain an obvious error or slip of the pen.
3. The prices given in a quote or offer are excluding VAT and other levies set by the governing official instances as well as possible expenses in the context of the agreement, thereby including travel and stay, dispatch and administration costs, unless otherwise stated.
4. If the acceptance (whether or not on secondary items) deviates from the selection included in the quotation or the offer, then the Supplier shall not bound to this. The agreement then is not fulfilled and not of power or binding due to this deviation, unless stated otherwise by the Supplier.
5. A compiled quote does not oblige the Supplier to carry out a part of the order for a corresponding part of the price quoted. Offers or quotes shall not automatically apply to future assignments.

**Article 3. Duration of contract; delivery times, implementation and amendment of agreement**

1. The agreement between Supplier and Counterparty is entered into for an indefinite duration, unless the nature of the contract changes or if the parties agree otherwise expressly and in writing.
2. If a term is agreed upon or given prior to the completion or delivery of certain goods, then this is no longer a fatal term. The Counterparty must give notice of default in writing, in the event of the Supplier exceeding a term. The Supplier must thereby be offered a reasonable term in which to fulfil the agreement.
3. If the Supplier requires data from the Counterparty to fulfil the agreement, the time limit for implementation shall start no sooner than after the Counterparty has made the correct and complete information available to the Supplier.
4. Delivery is done from company of Supplier. Counterparty is obliged to accept the goods at the moment these are made available. In the event of the Counterparty refusing acceptance or being negligent in providing information or instructions that are necessary for the delivery, then Supplier is entitled to store the goods at the expense and risk of the Counterparty.
5. Supplier is entitled to have certain work carried out by third parties.
6. Supplier is entitled to carry out the agreement in different phases and thereby invoice each phase completed separately.
7. If the agreement is carried out in phases, the Supplier can suspend the production of components belonging to a next phase until such time that Counterparty has given approval of the preceding phase in writing.

8. If, during the execution of the agreement, it appears that a considerable procedure is necessary to change or supplement this, then the parties shall timely go into consultation concerning the amendment of the agreement. Should the type, extent or content of the agreement, whether or not on request or indication from the Counterparty, of the competent authorities etcetera, be amended and the agreement thereby altered in quality and/or quantity, then this can have consequences on what is originally agreed upon. Thereby the amount originally agreed upon can be increased or decreased. The Supplier shall make a quotation as far as possible in advance. By making an amendment to the agreement the original term of execution can also be amended. The Counterparty accepts the possibility of an amendment to the agreement, thereby including the change in price and term of execution.
9. If the agreement is amended, by inclusion of a supplement, the Supplier is then entitled to execute the task only after approval is given by the authorised person of the Supplier and that the Counterparty has consented to the price of execution and other conditions, including the time to be determined at which the process shall start. The failure, or not immediate execution of the amended agreement does not present a breach by the Supplier and is not a basis for the Counterparty to terminate or annul the agreement. Without being in default, the Supplier can refuse a request to amend the agreement, if this may have consequences in quality or quantity, for example in the context of implementation of procedures or goods to be delivered.
10. If the Counterparty should be in default concerning the fulfilment of his obligation to the Supplier, then the Counterparty is held liable for all damages (including expenses) on the side of the Supplier whether caused directly or indirectly.
11. If the Supplier and Counterparty have agreed on a set price, the Supplier is none the less, at all times, entitled to an increase of this price without the Counterparty, in that case, being entitled to terminate the agreement for this reason, if the price increase is result of an authorisation or obligation of the law, legislation or due to a rise in the prices of raw materials, wages et etcetera or any other grounds that could not be predicted by any reasonable means when entering the agreement.
12. In the event that the increase in price, otherwise than consequences of an amendment to the agreement, amounts to more than 10% and occurs within three months after entering the agreement, then exclusively the Counterparty is entitled to make an appeal according to Title 5 section 3 of book 6 B.W., (Dutch Civil Code) which entitles termination of the agreement by means of a written declaration, unless the Supplier then still is prepared to fulfil the agreement on basis of the original agreement, or if the price increase is result of an authorisation or duty of obligation laid on the Supplier as result of the law or if stipulated that the delivery shall be made longer than three months after purchase.

**Article 4. Postponement, termination and interim withdrawal from the agreement**

1. Supplier is authorised to suspend fulfilment of obligations or terminate the agreement if:
  - the Counterparty does not honour the obligations of the agreement, only honours them partially or does not honour them within the given time limit;
  - after closing the agreement the Supplier learns about circumstances that give good grounds to fear that the Counterparty shall not fulfil the obligations.
  - on closing the agreement the Counterparty is requested to provide security for the fulfilment of the obligations mentioned in the agreement, and this security fails, or is insufficient;
  - if due to the delay on the part of the Counterparty, it can no longer be expected by the Supplier that the Counterparty shall honour the agreement according to the original conditions, the Supplier is then entitled to annul the agreement.
2. Furthermore the Supplier is entitled to terminate the agreement if circumstances of such type arise that make it impossible to fulfil the agreement, or in any other way circumstances of such type arise that unaltered maintenance of the agreement, in as far as is reasonable cannot be expected from the Supplier.
3. If the agreement is made null and void the advances from the Supplier to Counterparty are repayable on demand. If the Supplier postpones the fulfilment of the duties, Supplier still retains his rights under the law and agreement.
4. If the Supplier goes on to postponement or termination, he is not liable in any way whatsoever for reimbursement of damages and any costs whatsoever and howsoever arising from these.

5. If the termination is attributed to the Counterparty, the Supplier is entitled to reimbursement for damages, thereby including the costs incurred, whether these are due to direct or indirect cause.
6. If the Counterparty does not perform the required duties as these are stated in the agreement and this lack of conformity justifies termination, then the Supplier is forthwith entitled to terminate the agreement with immediate effect, without any obligation of having to make payment or reimbursement of damages or compensation, while the Counterparty, due to default is under obligation to reimburse damages or compensate these.
7. If the agreement is terminated by the Supplier in the mean time, then the Supplier in consultation with the Counterparty, shall take care that transferral of the remaining duties shall be carried out by a third party. This, unless the Counterparty is held accountable for the withdrawal. Should the transferral of these duties bring about extra costs for the Supplier, then these costs shall be charged to the Counterparty. The Counterparty is obliged to pay these expenses within the term mentioned, unless the Supplier states otherwise.
8. In the case of liquidation, moratorium or bankruptcy, or sequestration, if and so far as the – sequestration is not countermanded within three months – at the expense of the client, of debt restructuring or another situation whereby the Counterparty can no longer have free access to his assets, the Supplier has the right to forthwith terminate the agreement or annul the order or agreement, without any obligation from his side of having to reimburse damages or any other form of compensation. The advances of the Supplier to the Counterparty are, in that case, forthwith repayable.
9. If the Counterparty fully or partially annuls an order that has been placed, the workmanship procedures that were carried out and matters ordered or preparations made, increased possible costs concerning supply, dispatch and delivery thereof and the pursuance of the working hours reserved for the agreement, shall integrally be charged to the Counterparty.

#### Article 5. Force Majeure

1. The Supplier is not bound to fulfilment of any obligation/s towards the Client if hindered therein, through no fault of his own and cannot be attributed to him by virtue of the law, a legal action or generally accepted practice.
2. Force majeure in these general terms and conditions is understood as, besides what is included concerning the law and jurisprudence, all external causes, foreseen or unforeseen, which the Supplier cannot exercise any influence over, thereby putting the Supplier in a position of not being able to carry out his duties. Strikes at the Supplier's company including those of third parties. The Supplier also has the right to invoke force majeure if the circumstances hinder (further) fulfilment of the agreement, or commences after the point in time that Supplier should have fulfilled his commitment.
3. Throughout the duration of the circumstances of force majeure parties shall be entitled to suspend the fulfilment of their obligations. If this period is longer than two months, then both parties are entitled to terminate the agreement, without obligation to compensation for damages to the other party.
4. In so far as Supplier has already partially fulfilled his obligations of the agreement at the moment the circumstance of force majeure commenced, or shall be able to fulfil them, and respectively insofar separate value can be attributed to the part already fulfilled or yet to be fulfilled the Supplier is entitled to invoice the part that is fulfilled separately from the part that has yet to be fulfilled. The Counterparty is obliged to pay this invoice as if it were an individual agreement.

#### Article 6. Payment and collection costs

1. Payment should take place within 14 days after the date of invoice, in accordance to the instructions of the Supplier, in the currency stated on the invoice, unless instructed otherwise, by the Supplier in writing. The Supplier is entitled to invoice periodically.
2. If the Counterparty fails to make timely payment of an invoice, the Counterparty is then in default by operation of the law. The Counterparty is then indebted with an interest rate of 1% percent per month, unless the statutory interest is higher, in which case the statutory interest is due. The interest on the amount due shall be calculated from the moment that the Counterparty is in default to the moment of payment of the full amount due.
3. The Supplier is authorized to use payments made by the Counterparty firstly in reduction of the costs, subsequently in respect of interest due and finally for reduction of the principle amount and current interest.

4. The Supplier may, without thereby being in default, refuse an offer for payment, if the Counterparty should indicate another sequence of payment allocation. The Supplier can refuse complete repayment of the principle amount, unless the open post and accrued interest and collection costs are met.
5. The Counterparty is never entitled to settlement from that which is still owed to the Supplier.
6. Objections against a high invoice do not suspend the obligation to payment. The Counterparty that is not entitled to an appeal according to section 6.5.3 (articles 231 to and including 247 book 6 BW [Dutch Civil Code]) is neither entitled to make payment of an invoice as another reason for suspension.
7. All expenses, both judicial as well as extrajudicial, related to non-payment or late payment by the Client or related to another attributable shortcoming in implementation of the agreement by the Client, are fully for account of the Client. For debt collection services of outstanding amounts, a service charge of 15% (excluding V.A.T.) at the amount to be recovered with a minimum amount of € 125,--.

#### Article 7. Retention of title

1. Within the framework of the agreement, goods delivered/supplied by the Supplier remain the property of the Supplier until such time that the Counterparty has met all obligations to the Supplier correctly, as stated in the agreement(s) made.
2. Deliveries by the Supplier, pursuant to paragraph 1, that fall under Retention of title, may never be resold nor used as a means of payment. The Counterparty is not authorised to pledge or in any other way encumber goods that fall under Retention of title.
3. The Counterparty should always do what is reasonably expected of them to safeguard the Supplier's property rights.
4. If a third party should take possession of goods that fall under retention of ownership or lay hold of or enforce rights on these, then the Counterparty is duty-bound to notify the Supplier immediately.
5. Furthermore the Counterparty is obliged to insure and maintain insurance against fire, explosive and water damage as well as theft, also giving the Supplier access to this policy for inspection at his first request. With a possible benefit from insurance the Supplier is entitled to this benefit. For as much as necessary the Counterparty binds himself to the Supplier in advance to provide his cooperation in all that which is necessary in that context or that may (seem) to be desired.
6. In the case of the Supplier wanting to exercise his property rights in this article, the Counterparty gives unconditional and irrevocable consent in advance to the Supplier and third parties appointed by Supplier to enter all premises where the property of the Supplier is and to repossess it.

#### Article 8. Guarantees, inspection and advertising, limitation period

1. The goods to be provided by the Supplier comply to the standard requirements and norms at the time of delivery within reasonable limits, can be placed ready for normal use as intended in the Netherlands. The guarantee named in this article is applicable to goods that are intended to be used within the Netherlands. For use outside of the Netherlands, the Counterparty itself must verify whether it is suitable for use at that location and meets the demands that are required of it. In that case the Supplier can set other terms of guarantee and other conditions relative to the goods to be delivered or procedures to be carried out.
2. The guarantee mentioned in paragraph 1 of this article is only valid if this is agreed upon by both parties expressly and in writing. If the guarantee provided by the Supplier concerns a product that is produced by a third party, the guarantee is limited until issued by the producer of the product, unless stated otherwise.
3. Every form of guarantee is made null and void if a product becomes defective as result of incompetency or incorrect use thereof or use after expiry date, incorrect storage or maintenance carried out by the Counterparty and /or third parties, without the written consent of the Supplier, the Counterparty or third party attempting to bring about changes, mounting materials/components that are not meant be attached to the product or if these are processed or adapted in a way or by other means than the prescribed method. The Counterparty has no claim on guarantee if the defect is caused by, or is the consequence of circumstances in which the Supplier cannot exercise any influence, thereby including circumstances caused by the weather (for example yet not excluding, extreme rainfall or temperature) et cetera.

4. The Counterparty is bound to inspect goods delivered, immediately at the moment that these are made available to him, with respect to the particular working procedures having been carried out. Thereby the Counterparty must inspect if the quality and/or quantity of the delivery corresponds with what has been agreed on and meets the demands that the parties agreed on concerning this. Possible visual irregularities/defects must be reported to the Supplier in writing within seven days of delivery. Possible defects that are not visible must immediately be reported to the Supplier in writing, and at the very latest no later than fourteen days after detection. The report must contain, as far as possible, a highly detailed description of the defect, so that the Supplier is in a position to react effectively. The Counterparty must give the Supplier the opportunity to investigate a complaint.
5. If the Counterparty lays a complaint in time, it will not suspend his obligation to pay. In that case the Counterparty is still bound to acceptance and payment for the remaining goods ordered.
6. If an insufficiency is reported later, then the Counterparty does not have any right to restoration, replacement or compensation.
7. If a product is proved to be defective and a complaint is lodged within the given time limit, the Supplier shall, within a reasonable period after return receipt thereof, or if return is not a reasonable possibility, give written notification concerning the matter of insufficiency to the Counterparty. The Supplier will then have the choice of replacement, repair thereof or be it compensation for replacement to the Counterparty. In the case of replacement the Counterparty is obliged to return the defective product to the Supplier and transfer ownership to the Supplier, unless the Supplier wishes otherwise.
8. If it is established that a complaint is unfounded, then the costs arising from this, thereby including investigation costs, which is at the expense of the Supplier, shall be for the account of the Counterparty.
9. After the term of guarantee has expired, all costs for repair or replacement, including administration, shipping and call out charges, shall be charged to the Counterparty.
10. Contrary to the legal limitation periods, the limitation period for all claims and defence against the Supplier as well as third parties involved by the Supplier for fulfilment of the agreement, amounts to one year.

#### **Article 9. Liability**

1. In the event of the Supplier being liable, then the liability is limited to that which is governed in this provision.
2. The Supplier is not liable for damage, of any type whatsoever, arising due to Supplier being provided with incorrect or incomplete data on behalf of/or by the Client.
3. If the Supplier might be liable for damage of any kind, the liability of the Supplier is limited to a maximum of twice the amount given in the invoice of the order, at least to that part of the order concerning the liability.
4. The liability of the Supplier, is in each case still limited to the amount of the compensation made good by his insurer, if this were to arise.
5. Supplier is exclusively liable for direct damage.
6. Under direct damage is exclusively understood the reasonable costs to determine the cause and extent of the damage, in as far as that which is determined is related to damage in the sense of these conditions. The possible reasonable costs made due to insufficient performance of the Supplier to answer to the agreement, in as much as these can be attributed to the Supplier and reasonable costs made for prevention or limitation of damage, in so far as the Counterparty proves that these costs have led to limiting direct damage as is meant in these general conditions.
7. Supplier is never liable for indirect damage, thereby understood as consequential damage, lost profits, lost savings and damage by stagnation of business.
8. The included limitations of liability in this article do not apply unless the damage is done with intent or gross negligence of the Supplier or his managers' subordinates.

#### **Article 10. Transfer of risk**

1. The risk of loss, damages or depreciation is to be transferred to the Counterparty at the moment that goods are held by the Counterparty and are placed under the power of the Counterparty.

#### **Article 11. Indemnity**

1. The Counterparty indemnifies Supplier of possible claims by third parties, which, in connection with the implementation of the agreement suffer damage and the cause of which is accountable to others than the Supplier.
2. In the event of the Supplier being approached by third parties for this reason, then the Counterparty is obliged to assist the Supplier both judicial as well as extrajudicial and forthwith to do all that can be expected of him in that case. In the event of the Counterparty failing to take adequate measures, then the Supplier, without further notice, is entitled to do so himself. All costs and damage arising from this for the Supplier and third parties, are for the account and risk of the Counterparty.

#### **Article 12. Intellectual property**

1. Supplier maintains the right and authority that is due to him on grounds of the copyright and other intellectual legislation and regulation. Supplier is authorized to use his increased knowledge gained by the implementation of an agreement for other purposes, in so far as no strictly confidential information concerning the Counterparty is revealed to third parties.

#### **Article 13. Applicable law and dispute**

1. In all legal matters, in which the Supplier is a party, exclusively the Dutch law shall be applicable, also if due to an obligation being implemented in a foreign country fully or partially, or if the party involved in the legal relation resides there. The applicability of the Vienna Sales Convention is excluded.
2. The district judge at the location of the Supplier is exclusively authorized to take note of disputes, unless the law forcefully prescribes otherwise. Never the less the Supplier has the right to present the dispute to the authorised judge according to the law.
3. The parties shall first make an appeal to the judge only after having done their uttermost best in coming to a mutual settlement of the dispute.

#### **Article 14. Location and amendment of conditions**

1. These conditions are filed with the Chamber of Commerce in Groningen.
2. The last version of these terms and conditions filed is applicable, that is, the version that was valid at the time of the legal relationship with the Supplier.
3. The Dutch text of these General conditions is always mandatory for the explanation thereof.