

## GENERAL TERMS AND CONDITIONS

The private company with limited liability Spijkstaal International B.V. having its registered office in Hoogvliet, - herein further referred to as: **Spijkstaal**;

### CLAUSE 1. SCOPE

1. These Terms and Conditions apply to and therefore form part of all offers, advice, activities, agreements and the contractual relationships resulting from them. In the event that there are deviations from some points in these Conditions, the remaining conditions will continue to be effective even though this is not explicitly stated.
2. Spijkstaal's General Terms and Conditions prevail over the customer's deviating conditions. Provisions contrary to these Terms and Conditions will only be binding on Spijkstaal insofar as these deviating provisions have been explicitly agreed in writing with Spijkstaal.
3. Where in these Terms and Conditions the term 'customer' is used, this will also mean the other contractor or the party giving the assignment or buyer or user, that is to say the natural person or legal entity with whom the agreement is or will be made and apart from them, their agent(s), authorised representative(s), successor(s) in title and heirs.

### CLAUSE 2. OFFERS/QUOTES/ADVICE

1. All offers will remain valid during the period to be indicated by Spijkstaal. In the event that no period is mentioned, Spijkstaal's offers will be without any obligation.
2. Advice or quotes are without any commitment and are based on the information provided by the customer.
3. In the event that Spijkstaal has to incur costs of any nature whatsoever in order to make an offer, to give a quote or to give advice, Spijkstaal will be entitled to charge the customer for these costs even if no agreement is formed.
4. Sending offers and/or other documentation does not oblige Spijkstaal to supply or accept any order.
5. Spijkstaal reserves the right to refuse assignments or orders without giving any reasons.

### CLAUSE 3. AGREEMENT

1. With due observance of the provisions set out below, an agreement with Spijkstaal will only be formed after Spijkstaal has explicitly (in writing or in any other way) or actually accepted or confirmed an assignment and/or order. The written confirmation of the order is deemed to represent the agreement accurately and fully.
2. Any additional agreements or changes made after the agreement has been formed as well as agreements and/or commitments by Spijkstaal's personnel or made on behalf of Spijkstaal by members of staff of Spijkstaal, sellers, agents, representatives or other intermediaries of Spijkstaal, will only be binding for Spijkstaal if they have been confirmed in writing by Spijkstaal.

### CLAUSE 4. PRICES

1. All prices quoted by Spijkstaal are net, therefore excluding the turnover tax due and other levies imposed by the government and exclusive of additional costs such as costs of packaging, transport, assembly and insurance.
2. Unless otherwise stated, all quotations are made subject to price changes.
3. Spijkstaal is entitled to increase the prices agreed without this constituting a valid reason for the customer to terminate the agreement or to have it dissolved if and insofar as Spijkstaal's costing factors rise unforeseeably after the agreement is made. This also applies if the price rises are the result of foreseeable circumstances which nevertheless ought reasonably to be chargeable to the customer. The cost increasing factors mentioned above include for instance (but are not limited to) cost rises due to changes in currency rates, wage increases, increases in procurement prices, rises in import duties, turnover tax and excise duties and a rise in the prices of Spijkstaal's suppliers.

### CLAUSE 5. PAYMENT SECURITY

1. Spijkstaal is entitled to ask a deposit in the form of an advance on entering into the agreement.
2. In addition, Spijkstaal will be entitled to demand from the customer that sufficient security is given for the performance of the payment obligations under the agreement, such as for instance by a bank guarantee

### CLAUSE 6. PAYMENT

1. Payment will take place, by Spijkstaal's choice, either immediately by telephone money transfer or by advance payment either net in cash or within 14 days after the invoice date, at the offices of Spijkstaal or by payment into a bank or giro account to be indicated by Spijkstaal. Any deviations from the above will be stated by Spijkstaal on the confirmation of the order.
2. All payments made to Spijkstaal by the customer will serve to pay the client's oldest outstanding invoices regardless of descriptions reading otherwise.
3. Reliance on any deductions or set-off by the customer is never allowed and the customer waives this right explicitly.
4. Deviating payment arrangements will only be binding if they are agreed in writing.
5. If another mode of payment has been agreed, this payment should take place not later than a fortnight after the date of the respective invoice.
6. Complaints about an independent part of an itemised invoice will never release the customer from his obligation to pay within the time limit indicated with regard to the other items of the invoice.
7. The customer will be in default by operation of law by the mere lapse of the term of payment without any further demand for payment or notice of default being required.
8. When an invoice has remained fully or partially unpaid within the said term of payment and after the invoice date, the customer will owe interest to Spijkstaal amounting to the statutory interest increased by 2% per annum on the principal sum.
9. In the event of extrajudicial debt collecting or an attempt to this end, apart from the principal sum plus the interest the customer will also owe debt collecting charges amounting to 15% of the outstanding principal sum with a minimum of € 140 (excluding VAT). The obligation to pay these costs already ensues from the single fact that the customer has been sent a demand for payment by a third party debt collector.

## **CLAUSE 7. RETENTION OF TITLE**

1. All goods/items (actually) supplied by Spijkstaal remain Spijkstaal's property until such time as full payment has taken place of the amounts due by the customer to Spijkstaal with regard to these goods/items supplied.
2. Spijkstaal will at all times be entitled to have the delivered goods/items removed from the customer on the basis of the retention of title if the customer has not (partly) fulfilled his obligations towards Spijkstaal. The customer is obliged to co-operate with this on pain of a penalty of € 4,540 per day that the customer is/remains in default of this.
3. Taking back the goods/items as set out in this Clause does not affect Spijkstaal's right to compensation pursuant to the rules applicable on attributable failures in the performance of the obligation.

## **CLAUSE 8. DELIVERY/ TERM OF DELIVERY**

1. Unless otherwise agreed, delivery will be ex-works/warehouse of Spijkstaal. At the moment the goods/items leave the works/warehouse of Spijkstaal, the risk of the goods/items will transfer to the customer. Delivery carriage paid will only be applicable if and insofar as this has been indicated by Spijkstaal on the order confirmation/invoice or otherwise.
2. Immediately on delivery the customer is obliged to check the goods/items delivered or their packaging for shortages and/or damage or to carry out this check after a communication from the part of Spijkstaal that the goods/items are available at the customer's.
3. Spijkstaal is entitled to deliver the goods/items partially and to invoice – likewise partially.
4. In the event that the customer has found any shortages and/or damage to the goods/items delivered, the customer will be obliged to have this stated on the delivery note or the invoice or the documents relating to the carriage of the goods, failing which, complaints will no longer be dealt with. In that connection Spijkstaal's accounts will be decisive.
5. If the customer does not, not properly or not promptly comply with an obligation in force towards Spijkstaal or if it is doubtful whether the customer is able to fulfil his contractual obligations towards Spijkstaal, Spijkstaal will be entitled either to suspend the performance of any agreement made with the customer without any notice of default or judicial interference being required, or to demand security or additional security, or to dissolve the agreement in part or in whole, without Spijkstaal being obliged to pay any compensation and subject to any other rights they may have.
6. Delivery dates/periods are approximate and are neither deadlines nor binding unless explicitly agreed otherwise. Spijkstaal undertakes to comply with the agreed delivery date as much as possible. Exceeding the delivery date for any reason whatsoever, will never entitle the customer to cancel the assignment, to have the agreement dissolved, claim compensation or the non-performance by the customer of one or more obligations resulting from the agreement.
7. If on entering the agreement, it has been explicitly stipulated in writing that delivery before or on a certain date has to take place so that therefore the delivery date is of the essence of the agreement (deadline) and this has been laid down in writing, in the event that this date is exceeded the customer will only be entitled to cancel the agreement. Cancellation or dissolution of the agreement under the provisions set out in this Clause will never entitle the customer to any compensation, direct or indirect, howsoever caused.

## **CLAUSE 9. TRANSPORT AND RISK**

1. Spijkstaal is entitled to choose the manner of transport, despatch and/or packaging without having any liability in this respect so long as Spijkstaal has made this choice with sufficient care. Necessary packaging will be charged at cost and will not be taken back. The necessity for the use of packaging is at Spijkstaal's discretion.
2. Transport of the goods/items will be at the expense and risk of the customer, even if the carrier demands that the consignment notes, the transport addresses etc. include the clause that all transport losses are at the expense and risk of the sender.
3. If the transport is carriage paid, the customer will not be charged for the transport costs.
4. Any goods-in-transit insurance has to be taken out by the customer.

## **CLAUSE 10. FORCE MAJEURE**

1. Force majeure means any circumstance or unforeseen circumstance beyond the power of the parties because of which fulfilment of the agreement can no longer reasonably be demanded.
2. In connection with the above, the following circumstances are also regarded as force majeure:
  - a fault in Spijkstaal's business, or hindrances by which the normal performance of the agreement is prevented, is rendered more expensive or made more problematic;
  - a strike, illness or accident involving the employees entrusted with the performance of the assignment;
  - impediments by any cause whatsoever of Spijkstaal's suppliers from whom Spijkstaal buys the goods/items;
  - war, threat of war, riots, natural disasters, fire, transport obstructions, government measures affecting the performance of the assignment, as well as any other unforeseen events in Spijkstaal's business or in the businesses from which Spijkstaal buys the goods/items in connection with the assignment;
  - delayed or faulty delivery for any reason whatsoever of goods/items ordered by Spijkstaal within due time and in the proper manner.
3. In the event of force majeure the customer will give Spijkstaal the further opportunity to perform their obligations within one month after the agreed date on which the goods/items should have been delivered. If the force majeure situation continues, Spijkstaal will be entitled to demand that the assignment is changed in such a manner that it can be performed. If the latter is reasonably not possible, either party will be entitled to regard the agreement as dissolved. The declaration of dissolution has to be given to the other party in writing. On dissolution as a result of the force majeure situation described in this paragraph, neither party will be obliged to pay any compensation to the other party.
4. Spijkstaal is also entitled to invoke force majeure if the event causing the force majeure occurs after the performance should have been effected on the part of Spijkstaal.

## **CLAUSE 11. ASSEMBLY**

1. If and insofar as the parties have agreed the assembly explicitly in writing, this assembly will at all times be carried out at the rates applicable at the time. The members of staff entrusted with the assembly will be restricted to assembling the material supplied by Spijkstaal and/or the material included in the assignment unless explicitly agreed otherwise in writing.
2. Spijkstaal will not be liable for assembly work not covered by the agreement.
3. The customer has to ensure that Spijkstaal is able to perform the activities without any disturbance. To this end the customer has to arrange for instance that gas, water and electricity is present in the dry, frost-free area in which the activities have to be carried out or that the area is or can be heated unless otherwise resulting from the nature of the agreement. The customer will arrange at his own expense and risk that suitable housing, proper sanitary facilities and provisions required pursuant to the Dutch Working Conditions Act (*Arbowet*) are available for Spijkstaal's personnel and that the necessary lockable storage places for materials, tools and other items are present on the building site.
4. When the assembly cannot take place regularly and without interruptions for reasons which are not Spijkstaal's fault or it is delayed in any other way, Spijkstaal will be entitled to charge the customer for the additional costs resulting from this at the rates applicable at the time.
5. Any and all unforeseen costs will be at the expense of the customer, in particular:
  - a. costs caused because the assembly cannot take place during normal daytime hours;
  - b. travel and accommodation costs not included in the price.
6. The customer has to be present when the works are being completed and check whether the activities have been carried out properly.
7. Complaints with regard to the performance of the work or its duration made after the assembly personnel have left, will not be dealt with unless the customer is able to demonstrate that he could not reasonably have discovered the fault at the time the activities were completed. In that case the customer has to lodge a complaint in writing with Spijkstaal within eight days after having discovered the fault and to offer that they remedy any fault, provided this fault was notified within the warranty period. The customer will have to indicate what the fault consists of and when and how the fault was found.

## **CLAUSE 12. INTELLECTUAL PROPERTY**

1. Spijkstaal reserves the intellectual property rights to the designs, illustrations and drawings, sketches and quotations supplied in connection with the offer. These documents remain the property of Spijkstaal and shall not be reproduced, shown to third parties or used in any other way without explicit written consent. If the assignment for the delivery or the execution of the work is not given to Spijkstaal, the offer complete with the designs, illustrations and drawings have to be returned carriage paid to Spijkstaal within a fortnight after the date of the decision.
2. The customer shall safeguard Spijkstaal against claims from third parties pursuant to an infringement and/or violation of industrial property rights with regard to the manufacture and delivery of a product which is manufactured by Spijkstaal on his instructions.
3. The customer is not entitled to remove or make illegible any trademarks, marks or trade names applied by Spijkstaal.
4. Spijkstaal will not be liable to the customer under any circumstances whatsoever for the consequences of an infringement on a patent right or copyright if this infringement results from or is based on the use of Spijkstaal products or documentation in combination with other products, equipment or documentation not supplied by Spijkstaal.
5. Moreover, Spijkstaal will not be liable in any way for any violations, or misappropriations of, and infringements on intellectual property rights. Neither will Spijkstaal be liable in any other way for additional or consequential damage.

## **CLAUSE 13. COMPLAINTS/WARRANTY**

1. Complaints with regard to any invoice have to be submitted to Spijkstaal in writing provided with a proper explanation within a fortnight after the invoice date, failing which the customer's right to lodge complaints will lapse.
2. With due observance of the provisions set out below Spijkstaal guarantees that the goods/items and/or services supplied by them are sound and of such quality that they meet the requirements set reasonably to the type supplied.
3. A warranty with regard to the goods/items or services acquired by Spijkstaal from third parties for the performance of the agreement with the customer, will not go beyond any warranties given by those third parties.
4. Faults caused by any acts or omissions due to the customer or third parties not performing, not performing within due time or not properly performing any obligations, or by any extraneous cause which is not reasonably attributable to Spijkstaal are not covered by the warranty given by Spijkstaal.
5. If the customer invokes the warranty, Spijkstaal will be entitled to inspect the services or goods and/or the assembled goods/items in order to assess the question whether or not this invocation is justified.

If at Spijkstaal's discretion the warranty is invoked with good reason, they will pay compensation to the customer which will never be higher than the amount invoiced or paid for those goods/items, or they will remedy the services or goods supplied and/or the goods/items assembled or have them remedied, or Spijkstaal will take these goods/items back and Spijkstaal will replace them by sound samples or equivalent goods/items which do not infringe the intellectual or industrial property rights of third parties, all this by Spijkstaal's choice.
6. The warranty will never relate to the faults in services or goods supplied and/or goods/items assembled if this is, directly or indirectly, the result of wear and tear, negligent use, any event causing damage which occurs after Spijkstaal has performed their obligation, or of a change applied, or work carried out by a party other than Spijkstaal on the goods/items supplied.
7. Any invocation of warranty has to be submitted in writing to Spijkstaal as soon as possible but in any event within one month after the assembly and/or the occurrence of the defect and provided with a proper explanation failing which any warranty rights will lapse.
8. Spijkstaal does not offer any warranty on second-hand items offered by Spijkstaal without being overhauled or renovated. Such items will always be sold at the buyer's risk. Spijkstaal is not obliged to give any safeguarding whatsoever unless explicitly otherwise agreed in writing.
9. The warranty period of second-hand vehicles supplied by Spijkstaal, offered by Spijkstaal after an overhaul or renovation, amounts to three months. With regard to the warranty periods of non-overhauled vehicles and parts, the warranty commitments agreed on the sale will apply.
10. The warranty is not applicable to electro-vehicles and other products manufactured by Spijkstaal which are repaired or changed by others in such a manner that, exclusively at Spijkstaal's discretion, the normal operation and/or reliability is affected. Neither does the warranty apply to vehicles which have not been treated correctly, have not been maintained sufficiently or which have been damaged by a collision or such like.
11. The warranty will in any event lapse at all times and automatically when the goods/items supplied have changed ownership, when with regard to the warranty on vehicles 12 months have lapsed after the invoice date.

## **CLAUSE 14. LIABILITY**

1. Spijkstaal is not liable for the consequences of inaccurate information and advice given by Spijkstaal's personnel or for faults occurring in leaflets, brochures and/or other advertising material. Spijkstaal will never be liable for damage caused by the gross negligence or intention of auxiliary persons.
2. Subject to the provisions of mandatory law with regard to (product) liability, Spijkstaal will not be obliged to pay any compensation for any direct or indirect damage of any nature whatsoever, including consequential losses to movables or immovables, or to persons, both at the customer's as well as at any third parties.
3. If it is established in legal proceedings that Spijkstaal is liable on any grounds whatsoever, Spijkstaal's liability will at all times be limited to an amount equal to the invoice amount of the goods/items supplied or the activities/services performed to which the liability is connected.
4. The customer is obliged to safeguard Spijkstaal against all claims from third parties of any nature whatsoever and on any grounds whatsoever.

## **CLAUSE 15. GENERAL**

1. The products supplied by Spijkstaal are exclusively intended for standard commercial use. Spijkstaal is entitled to demand additional contractual securities if the customer wishes to give or gives a use other than the intended use to the products supplied by Spijkstaal.
2. The rights and obligations of the customer as stated in these General Terms and Conditions and the agreements to which these General Terms and Conditions apply, cannot be transferred by the customer without the prior written consent of Spijkstaal.
3. The customer has to refrain from recruiting or attempting to recruit any of Spijkstaal's employees who are involved in fulfilling the performances provided by the respective agreement without the written consent of Spijkstaal on pain of a penalty of € 22,700 per employee which penalty is not open to judicial mitigation.

## **CLAUSE 16. PLEDGE OR ASSIGNMENT TO THIRD PARTIES**

1. Spijkstaal will be able to assign or pledge in part or in whole the balance as meant in clause 6 paragraph 1.

## **CLAUSE 17. CANCELLATION AND CHANGE IN ASSIGNMENT**

1. A change or cancellation of an assignment for any reason whatsoever requires the written consent of Spijkstaal.
2. The additional or reduced costs resulting from a change in the assignment will be set off taking into account the activities already carried out and which were of no use.
3. In the event of a unilateral cancellation by the customer disallowed under these Terms and Conditions, he will be obliged to pay compensation with regard to the costs incurred and profits lost notwithstanding and without affecting any other rights Spijkstaal may have.

## **CLAUSE 18. REFUSAL TO TAKE DELIVERY**

1. In the event that the customer refuses to take delivery of the performance/items after they have been offered by Spijkstaal, Spijkstaal will be entitled to act as follows:
  - a. as if the agreement has been cancelled by the customer in accordance with clause 17 paragraph 3;
  - b. or to claim fulfilment of the agreement, as well as to charge storage costs and any further compensation;
  - c. or to keep the items either in storage for the customer for 30 days charging storage costs or if they have not been collected by the customer, to act at their discretion as provided under a. or b.
2. If Spijkstaal acts as provided for above under a., the compensation will be increased by the amount of the storage costs for 30 days.
3. If the items have already been paid for by the customer, Spijkstaal will keep the goods in storage for not more than three months. If the customer still will not take delivery of the items after this date, Spijkstaal will be entitled to dispose of the items freely, to sell them and to pay the proceeds to the customer after deduction of the storage and other costs as well as an amount of compensation as meant in clause 17 paragraph 3. Before Spijkstaal is allowed to do this, the intention to this end should have been notified to the customer in writing.
4. The storage costs will amount to 1% of the sale value of the goods stored per month, excluding VAT.

## **CLAUSE 19. EXTRA COSTS, CONTRACT VARIATIONS**

1. The customer will be charged additionally for the costs caused because the customer remained in default of enabling the performance or progress of the work. Contract variations will be settled in fairness. Generally included in additional work are: all activities and supplies not included in the offer and required by the customer, unless explicitly agreed otherwise.

## **CLAUSE 20. APPLICABLE LAW AND DISPUTES**

1. Unless otherwise agreed, all agreements will be governed by Dutch law.
2. Exclusively Dutch law will apply to all offers, agreements and their execution with the exclusion of the Uniform Act on the International Sale of Goods (*Eenvormige Wet inzake de internationale koop van roerende lichamelijke zaken*: Act of 15 December 1971, S780, S781).
3. With regard to the explanation of international trade concepts, the (Inco-Terms) will apply as provided by the International Chamber of Commerce in Paris (ICC).
4. All disputes will be exclusively settled by the competent court in The Hague unless Spijkstaal chooses to submit the case to the court prescribed by law. The provisions set out in this paragraph do not apply with regard to the competence of the Sub-District Court.

Spijkstaal International B.V.