

These are the General Terms and Conditions relating to the sale of goods, the performance of assignments and the contracting for works as applied by ONTOP B.V. of MIDDELBURG. These general terms and conditions were deposited with the Chamber of Commerce for "Zuidwest-Nederland" in Middelburg (NL) on June 1, 2011 under number H.R. 22019262.

## **I PARTIES**

1. In these general terms and conditions ONTOP B.V., with registered offices in Middelburg, will be referred to as Ontop.
2. In these general terms and conditions 'counterparty' refers to: "the party which has requested a quote from Ontop or has placed an order with Ontop relating to the sale of goods or the party which has given Ontop an assignment in the sense of Civil Code article 7:400 or with whom Ontop has contracted to perform works."

## **II. GENERAL**

1. These general terms and conditions apply to all offers made by Ontop, such as concluded contracts of sale and contracts of assignment or contracting for works,
2. Any general terms and conditions applied by the counterparty are not accepted by Ontop unless Ontop has explicitly agreed this in writing with the counterparty.
3. The weights, dimensions, images, drawings and other information included in catalogues or elsewhere are for information purposes only and are not binding, subject to the customary tolerances, unless the quote or contract indicates otherwise. All information remains the property of Ontop at all times. The customer may not copy it or make it available to third parties.

## **III OFFERS**

1. All offers by Ontop to carry out assignments or to contract for works are non-binding.
2. Every offer is based on the assumption that Ontop can carry out its work without any stoppages and in the order which it chooses.

## **IV FORMATION OF CONTRACT**

A contract to which Ontop is a party is formed as soon as the contract is accepted by the counterparty.

## **V FULFILMENT OF CONTRACT (GENERAL)**

### **A. Amendments to the contract**

1. The contents of the contract can be amended or supplemented at the request of one or both parties. An amendment of or addition to the contents of the contract which is sought by the counterparty must be agreed in writing by Ontop.
2. If the agreed amendment or addition results in higher costs, a higher cost price or additional work, Ontop is entitled to charge this higher cost price or the additional work on to the counterparty.

### **B. Use of third parties**

1. Ontop is entitled to use third parties for the fulfilment of its contracts.
2. It is possible that third parties used for the fulfilment of a contract wish to limit their liability in that regard. Ontop assumes, and where necessary hereby stipulates, that the contract concluded with the counterparty also includes the power to accept such a limitation of liability on the counterparty's behalf as well. If counterparty requires Ontop to use a particular third party for the fulfilment of a contract, Ontop will not be liable for mistakes which may be made by this third party.

## **VI FULFILMENT OF CONTRACT OF SALE**

### **A. Delivery of goods**

1. The goods sold by Ontop will be delivered by or on behalf of Ontop at the place agreed by Ontop with the counterparty.
2. The delivery commences as soon as the goods leave Ontop's site and is completed at the moment of delivery at the agreed place.
3. All goods delivered by Ontop are transported at the counterparty's expense and risk.
4. The customer must ensure adequate unloading facilities at the destination address. The customer must provide staff and mechanical assistance for the unloading of our products free of charge. The customer will generally do everything possible to ensure that the products can be received immediately upon the arrival of the means of transport.
5. Ontop has the right to store products which cannot be sent for reasons outside its control or have them stored at the customer's expense and risk. In that case Ontop may demand payment of both the storage costs and the purchase price as if the delivery had taken place.
6. Claims must be notified within eight (8) days of receipt of the goods.

## **B. Delivery time**

Specified delivery times can never be considered a term to be observed on penalty of forfeiture of rights. In the absence of timely delivery, Ontop must therefore be given written notice of default.

## **C. Transfer of ownership**

1. Ontop retains ownership of the goods sold and/or delivered by it up to the moment when the counterparty has complied with its obligations to Ontop which arise under this or any other contract with Ontop.
2. The counterparty is not entitled to transfer ownership of the sold and/or delivered goods to third parties, either as a surety or otherwise, before the moment specified in the previous paragraph, but is only entitled to use the sold and/or delivered goods in the context of its normal business activities.

## **D. Return of goods**

Delivered goods will not be accepted back. Exceptions will be made if the goods to be returned are supplied in the original packaging, are saleable and undamaged, and the original delivery took place less than six (6) months ago. Products which meet the above criteria will be credited at the invoiced value. Shipping costs for the return shipment will be borne by the customer. 15% of the total gross value of the goods will be charged for restocking.

## **E. Guarantee on delivered goods**

1. Ontop guarantees to the counterparty that the goods which it will supply comply with all agreed specifications, and are free of design, material and manufacturing defects. Ontop's guarantee covers all metal components and is limited to twenty-four (24) months after delivery by Ontop. To comply with its guarantee obligations, Ontop will be obliged to supply new or other non-defective components or to replace defective parts at its expense, this always at Ontop's discretion. All costs which exceed the sole obligation as described in the preceding sentence will be borne by the counterparty.
2. If various Ontop systems are combined within an installation, the above guarantee provisions for each system apply only to the part of the installation where this system has been used, provided that the usage complies with the manufacturer's instructions. If Ontop components are combined with non-Ontop components within an installation, any entitlement to a guarantee lapses.
3. Ontop's guarantee does not apply to goods supplied by Ontop which have been exposed to abnormal conditions, or if a defect in these goods is the consequence of an accident, improper use, abuse or negligence, nor if it involves normal wear and tear.
4. If the counterparty fails to comply, fails to comply in time or fails to comply properly with any obligation which it has under the contract concluded with Ontop or under a related contract, Ontop is not obliged to provide a guarantee - by any name - with regard to any of these contracts. If the counterparty commences or commissions the dismantling, repair or other work with regard to the delivered goods without Ontop's written permission, any entitlement to a guarantee will lapse.

## **VII FULFILMENT OF CONTRACT OF ASSIGNMENT OR CONTRACT FOR WORKS**

### **A. Execution**

If it has been agreed that the activities to carry out the assignment or the works will take place in phases, Ontop is entitled to delay the start of the activities which form part of a phase until the counterparty has informed Ontop that it has approved the execution of the preceding phase.

### **B. Execution period**

1. Specified execution periods can never be considered a term to be observed on penalty of forfeiture of rights, unless expressly agreed otherwise. In the absence of timely execution, Ontop must therefore be given written notice of default.
2. The agreed execution period is set in the expectation that the conditions under which the execution will take place will not change after acceptance of the assignment.
3. If such a change in conditions nonetheless takes place, regardless of how foreseeable this was, such that the execution of the assignment is delayed, the agreed time of execution will be moved accordingly.

### **C. Counterparty's co-operation**

1. The counterparty will ensure that it and/or its employees always provide Ontop will all the co-operation, data and/or information which Ontop deems necessary or useful in order to be able to properly carry out the agreed activities

### **D. Guarantees on work performed**

1. Ontop will carry out the assignment or the work to the best of its ability in accordance with the requirements for good and sound work.
2. If Ontop is responsible for fitting/installing goods supplied by it, the guarantee period is limited to twelve (12) months after the day on which the fitting/installation is completed by Ontop. In that case this guarantee merely comprises the obligation for Ontop to perform the activities in question again if they are deficient.

3. The guarantee in no case includes defects which occur in or are fully or partly the result of:
  - a. a failure to abide by operating and maintenance instructions or usage other than the anticipated normal usage;
  - b. normal wear and tear;
  - c. the application of any new government regulation concerning the nature or quality of the materials used;
  - d. fitting/installation or repairs by the counterparty or third parties;
  - e. materials or goods used in consultation with the counterparty;
  - f. materials, goods, methods of working and structures which are used on the counterparty's express instructions, and materials and goods supplied by or on behalf of the counterparty;
4. If the counterparty fails to comply, fails to comply in time or fails to comply properly with any obligation which it has under the contract concluded with Ontop or under a related contract, Ontop is not obliged to provide a guarantee - by any name - with regard to any of these contracts.
5. No guarantee is given with regard to inspections, advice and similar activities provided by Ontop.

#### **VIII PRICES**

1. Prices are always quoted on the basis of the prices in force on the date on which the quote is generated.
2. The prices given in the contract or quote are based on the wages and materials costs which apply when the quote is given or the contract concluded. Changes in the cost of products as a result of a change in the wages and materials costs after a quote has been given can be charged on to the counterparty by Ontop insofar as the change could not reasonably be foreseen at the time when the quote was given.
3. All prices are exclusive of the sales tax due, and exclusive of other government levies. Ontop has the right to charge the duties, levies and taxes on supplied goods or on raw materials from which the supplied goods are manufactured on to the counterparty insofar as they are introduced or increased after the date on which a quote has been given.
4. The contract includes the right for Ontop to charge separately for additional work which it performs, as soon as it knows the amount to be charged for this work. The other rules set out in this article apply correspondingly to the calculation of additional work.
5. Unless specified otherwise in the quote or contract, our prices are ex-works.

#### **IX PAYMENT**

1. The counterparty is obliged to pay everything which it owes Ontop within thirty (30) days of the date of the invoice without any discount.
2. If the counterparty fails to pay within the period specified in the first paragraph, it will be deemed legally, i.e. purely as a result of the expiry of the period, to be in default and the counterparty can be required to pay interest at 1.5% per month on the total amount owed to Ontop by the counterparty with effect from the due date specified in the previous paragraph of this article.
3. If the counterparty does not pay as agreed, Ontop can take steps to collect the debt which expressly include seeking legal assistance, and all resultant extrajudicial and judicial costs, including the unsettled court costs, can be charged on to the counterparty.
4. Ontop is entitled at all times to require payment on delivery of the sold goods or demand payment in advance or the posting of a surety by the counterparty, at Ontop's discretion. Ontop is also expressly permitted to make the delivery of sold goods contingent on the condition that the counterparty has provided proof of its creditworthiness to Ontop's satisfaction.

#### **X SUSPENSION AND DISSOLUTION**

1. If fulfilment of the contract is prevented due to force majeure, Ontop is entitled either to suspend fulfilment of the contract by up to six (6) months or dissolve the contract in full or in part, without judicial intervention, without being obliged to pay any compensation. During the suspension Ontop is entitled, and at the end thereof it is obliged, to choose between execution or full or partial dissolution of the contract.
2. In the case of both suspension and dissolution under paragraph 1, Ontop is entitled to demand immediate payment for the (raw) materials, parts and other goods reserved, worked and manufactured in execution of the contract, to the value which can reasonably be assigned to them. In the event of dissolution under paragraph 1, Ontop is obliged, upon payment of the sum specified in the preceding sentence, to take possession of the goods included thereunder, in the absence of which Ontop is entitled to have these goods stored at the counterparty's risk and expense or to sell them on its behalf.
3. If the counterparty fails to comply, fails to comply in time or fails to comply properly with any obligation which it has under the contract concluded with Ontop or any related contract, or if there are good grounds for fearing that the counterparty is not or will not be able to fulfil its contractual obligations with respect to Ontop, and in the event

of bankruptcy, payment moratorium, shut-down, liquidation or partial transfer - either as surety or otherwise - of counterparty's business, including the transfer of a significant proportion of its receivables, Ontop is entitled either to suspend execution of each of these contracts for up to six (6) months, or dissolve them in full or in part without notice of default and without judicial intervention, without being obliged to pay any compensation or provide any guarantee, and without prejudice to the further rights accruing to it. During the suspension Ontop is entitled, and at the end thereof it is obliged, to choose between execution or full or partial dissolution of the contract(s).

#### **XI INDEMNIFICATION**

The counterparty indemnifies Ontop against claims by third parties which arise from (the use of) the goods sold and supplied by and work performed by Ontop.

#### **XII APPLICABLE LAW**

All contracts to which Ontop is a party are governed exclusively by Dutch law.

#### **XIII DISPUTES**

All disputes, including those which are only deemed to be such by one of the parties, which arise as a result of any contract concluded with Ontop or any related contract, whereby Ontop acts as the selling party or the contractor, will be settled exclusively by the competent court in Middelburg court district under the rules of jurisdiction *ratione materiae*, unless Ontop and the counterparty have agreed to submit the dispute to an arbitration body.