

# Terms and Conditions BMTEC B.V.

## **Article 1: General**

These terms and conditions apply to every offer, quote, and agreement between BMTEC B.V. – hereinafter referred to as "User" – and clients whenever the User states that these terms and conditions apply, insofar as the parties have not explicitly deviated from these conditions in writing.

The present terms and conditions also apply to agreements with the User for which the User needs to employ third parties.

These terms and conditions are also written for any employees of the User and its management.

The applicability of any of the client's purchasing conditions or other conditions is expressly excluded.

If one or more provisions in these terms and conditions prove to be null and void or are entirely or partially nullified, this does not affect the validity of the other provisions in these terms and conditions. The User and the client will then consult with each other to determine new provisions to replace the nullified or void provisions, in which case they will attempt to adhere to the goal and spirit of the original provisions as much as possible.

If the explanation of one or more provisions in these terms and conditions are unclear, the explanation must be in line with the spirit of these provisions.

If there is a conflict between parties that is not regulated in these terms and conditions, this situation should be assessed in the spirit of these terms and conditions.

If the User does not always require strict adherence of these terms and conditions, this does not mean its provisions are not applicable, or that the User loses the right to require strict adherence of these provisions at any other time to any extent.

## **Article 2: Quotes and offers**

All of the User's quotes and offers are non-binding, unless the User has set an expiration period for acceptance in the quote. If no such expiration period has been set, no rights can be derived from the offer or quote, in case the product that the offer or quote relates to is no longer available.

The User cannot be held to its quotes or offers if the client can reasonably understand that quotes or offers, or part of them, contain an apparent error or mistake.

The prices stated in an offer or quote are without VAT (value added tax) or other government-imposed taxes, and any costs that have to be made as part of the agreement such as travel, accommodation, shipping, or administrative costs will also not be included, unless otherwise stated.

If the acceptance (whether on minor points or otherwise) differs from the offer or quote provided, the User is not bound by it. The agreement will not come into effect with this deviating acceptance, unless the User states otherwise.

A composite indication of price shall not obligate the User to deliver a part of the goods included in the offer or quote at the mentioned price. Offers and quotes do not automatically apply to future orders.

**Article 3: Contract period; execution deadline, transfer of risk, execution and modification of the agreement; price increase; prepayment.**

The agreement between the User and the client will be for an indefinite period of time, unless the nature of the agreement suggests otherwise or unless the parties explicitly agree otherwise in writing.

If, for the implementation of certain activities or for the delivery of certain goods, a term has been agreed upon or indicated, this shall never be a final deadline. If a deadline is exceeded, the client must notify the User of his default in writing. The User should be offered a reasonable term to still execute the agreement.

The User will execute the agreement to the best of its knowledge and ability, and in accordance with good professional practice based on the knowledge available at that time.

The User has the right to have certain activities executed by third parties. The applicability of article 7:404, 7:407 paragraph 2 and 7:409 BW (Dutch Civil Code) is hereby expressly excluded.

If the User or the third parties employed by the User for the purposes of the assignment must carry out any activities at the client's location or a location indicated by the client, the client will provide the facilities reasonably desired by those employees free of charge.

Delivery shall be made at the User's company. The customer is obliged to accept all materials at the time they are made available to him or her. If the client refuses to accept the delivery or is negligent in giving out information or instructions that are necessary for the delivery, then the User has the

right to store the items at the client's risk and expense. The risk of loss, damage, or decrease in value transfers to the client as soon as the items are at the client's disposal.

The User has the right to execute the agreement in different phases and to separately invoice the executed portion.

If the agreement is executed in phases, the User can postpone those parts of the execution that belong to a future phase until the Client has approved the results of the previous phase in writing.

The client shall take care to ensure that all data indicated by the User as necessary, or of which the client should reasonably be expected to understand are necessary for the execution of the agreement, will be provided to the User within a reasonable amount of time. If the data required for the execution of the agreement is not provided to the User within this time frame, the User has the right to postpone the execution of the agreement and/or charge the client for extra costs resulting from the delay in accordance with the customary rates. The implementation term does not commence before the client has provided the User with the data. The User is not liable for damage of any nature if the User has relied on incorrect and/or incomplete data provided by the client.

If during the execution of the agreement it turns out that it is necessary to amend or complement the agreement for proper execution, then the parties will amend the agreement jointly and in a timely manner. If the nature, size, or content of the agreement is amended at the request or suggestion of the client, authorities, or any others, and this changes the agreement in a qualitative or quantitative manner, this can have consequences for what was originally agreed upon. This can also lead to the initially agreed upon amount being increased or decreased. The User will provide an accurate quotation as best as possible. If the agreement is amended, the original timeline for execution can be changed as well. The client must accept the possibility that the agreement could be amended, including an amendment in price or timeline for execution.

If the agreement is amended and something is added, the User has the right to execute that first so long as this has been agreed to by the authorized person within the User's organization, and the client has agreed to the execution for the stated price and other conditions, including the agreed time at which the agreement will be executed. The non or delayed execution of the changed agreement is not a default by the User and is not a ground for the client to cancel or nullify the contract.

The User can refuse a request to amend the agreement without causing a default if the proposed change could qualitatively and/or quantitatively affect such things as the activities to be executed or goods to be supplied.

If the client defaults in the execution of his or her duties regarding the User, then he or she is responsible for all of the User's damages caused thereby, be that direct or indirect.

If the User agrees with the client on a fixed fee or price, the User will nevertheless be entitled to increase this fee or this price without the client having the right to dissolve the agreement for that reason. If the increase in price is the result of a law or regulation, or is caused by an increase in the price of the raw materials, salaries, or on other grounds that were not reasonably foreseeable when entering into this agreement.

If the price increase is more than 10%, caused by something other than a change in the agreement, and takes place less than 3 months after the signing of the agreement, then it is solely the client who can claim Article 5 Paragraph 3 Book 6 BW (Dutch Civil Code). Unless the User is still prepared to execute the agreement on the basis of the originally agreed clauses, the client has the right to terminate the agreement in writing:

- if the price increase is the result of a legal power or a legal obligation for the User;
- if it has been agreed that the handover will take place beyond the three months after the agreement was signed;
- or, in case of supplies of materials, if it has been agreed that the supply will take place beyond three months after the purchase.

The User may demand a prepayment of a maximum of 40% from the client for agreements where they have agreed to an amount of €2000 (no VAT) or higher.

The User can demand a full prepayment at the time of the first agreement.

#### **Article 4: Postponement, annulment, and premature cancellation of the agreement**

The User is authorized to suspend compliance with its obligations or to dissolve the contract if: the client does not meet his or her obligations fully or in a timely manner; if after the conclusion of the agreement the User is informed of circumstances that give it grounds to expect that the client will not meet his or her obligations; if the client was requested to provide security at the conclusion of the contract for compliance with contractual obligations and this security is either not given, is insufficient, or is delayed on part of the client, it cannot be expected of the User that it meets the originally agreed upon conditions.

The User shall furthermore be authorized to dissolve the agreement if circumstances arise of such a nature that fulfilment of the obligations becomes impossible, can no longer be demanded, or other circumstances cause the original expectations of the agreement to no longer be reasonably demanded.

If the agreement is dissolved, all the User's claims upon the client will be immediately due. If the User postpones the fulfillment of its obligations, it will retain its claim ensuing from the law and the contract.

If the User postpones or dissolves the agreement, it is in no way liable for damages and costs occurred in any way.

If the dissolution can be attributed to the client, the User is entitled to compensation of the losses, including any costs that are incurred directly and indirectly as a result.

If the client does not execute his or her duties resulting from the agreement and this non-execution justifies dissolution, the User has the right to dissolve the agreement, effective immediately, without any liability as far as compensation is concerned. The client, because of his default, will be liable for compensation.

If the agreement is terminated prematurely by the client, the User will, in coordination with the client, take care of the transfer of the tasks that are not yet completed to a third-party unless the client is accountable for the termination. If the transfer of the tasks brings about extra costs for the User, these will be charged to the client. The client must cover these costs within the mentioned time unless the User states otherwise.

In the case of liquidation, (request for) suspension of payment, bankruptcy, the seizure of assets on account of the client (if the seizure is not lifted within three months) to refinance debts, or of another circumstance resulting in the client no longer being able to freely dispose of his or her assets, the User has the right to terminate the agreement with immediate effect, or annul the order or agreement. If this occurs, the User will not have any obligation to pay any compensation or reimbursement of damages. In this case, the claims that the User has toward the client are immediately due.

If the client cancels a placed order partially or completely, he or she will be charged in full for: all executed activities and the goods ordered or prepared for the execution; potential supply, removal, and delivery costs; and the man hours reserved for the execution of the agreement.

#### **Article 5: Force majeure**

The User will not be obligated to fulfill any obligation if it is prevented from doing so due to a circumstance which cannot be attributed to gross negligence or an intentional act or omission on its part, and for which is not according to the law, a legal act, or generally accepted standard.

In these Terms and Conditions, the term 'force majeure' will be taken to mean (in addition to its definition in law and legal precedent) all external causes – foreseen or unforeseen – on which the User has no influence, but have resulted in the User being unable to perform its obligations. This includes strikes at the User's company or by third parties. The User will also be entitled to invoke force majeure if the circumstance rendering (further) execution of the agreement impossible takes place after the User should have fulfilled its obligation.

The User can postpone its obligations under the agreement as long as the force majeure circumstances continue. If this period is longer than two months, either party has the right to dissolve the agreement without any obligations to pay damages to the other party.

Assuming the User has already partially met his obligations or will be able to meet his obligations under the agreement at the time that the force majeure commences, and the executed and to-be-executed activities have independent value, the User has the right to invoice these activities separately. The client is obligated to pay this invoice as if there were a separate agreement.

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

Payment must always be completed within 14 days after the date of the invoice in the method and currency invoiced by the User, unless the User has indicated otherwise in writing. The User is entitled to invoice periodically.

If the client does not pay the invoice on time, the client is legally in default. The client then owes additional interest of 2% a month for non-commercial transactions, unless the legal interest is higher. In this case, the legally determined interest is 8% a month for commercial transactions. If the legal interest is higher under this circumstance, the legally determined interest is owed. The interest over the amount due will be calculated from the default date until the moment the entire sum has been settled.

The User has the right to use any payments made by the client to first deduct any costs made, then deduct the accumulated interest, and finally to pay off the total amount due and interest currently accruing. The User may, without thereby creating a default, refuse an offer of payment if the customer proposes to allocate the money in a different order. The User shall be entitled to refuse full payment of the principal sum if said payment does not include the interest still due, the current interest, and collection costs.

The customer is never entitled to settle amounts owed to the User. Any objections against the amount invoiced do not suspend the client's payment obligation. The client who does not appeal to

section 6.5.3 (Articles 231 to 247 of book 6 BW (Dutch Civil Code) is not entitled to suspend the payment of an invoice for any other reason.

If the client is in default or fails to fulfill his or her obligations in a timely fashion, the client will be liable to pay any reasonable costs incurred in order to obtain fulfilment. The extra-judicial costs will be calculated based on what is customary in Dutch collection practices, which at the moment is the calculation method according to the rates mentioned in the Netherlands Extrajudicial Collection Costs Decree (Besluitvergoeding voor buitengerechtelijke incassokosten). If, however, the User has incurred higher collection costs than reasonably required, the actual costs are eligible for compensation. Any judicial and execution costs will also be recovered from the client. The client will also owe interest on the owed collection charges.

#### **Article 7: Retention of Title**

The goods delivered by the User to fulfill the agreement will remain the property of the User until the client has met all his or her obligations under the agreement correctly.

Goods supplied by the User that, based on paragraph 1, are part of retention of title, cannot be resold and can never be used as a payment method. The client does not have the right to make the goods available under any title or in any way whatsoever to any third party.

The client must always do what can be reasonably expected of him or her to ensure the security of the User's property rights. If third parties seize the delivered items under retention of ownership and/or wish to establish rights thereupon, the client is obligated to inform the User immediately. The client will be under the obligation to insure any goods supplied under the retention of title and keep them insured against fire, explosion, water damage, and theft, and must give the User access to this insurance policy at its first request. In case of any payment by the insurance, the User shall be entitled to this money. The client agrees with the User to extend his or her cooperation for anything that is necessary or desirable in light of any insurance claims.

In the event that User wishes to exercise its ownership rights mentioned in the present article, the client must give his or her unconditional and irrevocable consent to the User and third parties appointed by the User to enter into those places where the User's property is stored and take them back.

### **Article 8: Guarantees, research and advertisements, limitation**

The goods to be delivered by the User must adhere to the usual requirements and norms that can reasonably be expected at the time of delivery, and for which are intended for normal use in the Netherlands. The warranty mentioned in this article shall apply to goods that are intended for use within the Netherlands. When outside the Netherlands, the client must verify that the use is suitable and whether goods meet the imposed conditions. The User can set a different warranty and different conditions with regard to the goods to be supplied or services to be executed in that case.

The warranty mentioned in paragraph 1 of this article applies to a period of 30 days after delivery, unless something else follows from the nature of the goods, or the parties have agreed otherwise. If the User issues a warranty related to a good produced by a third party, then it is limited to the warranty issued by whomever produced the good, unless otherwise agreed.

All forms of guarantee will cease to apply if a fault occurs as the result of or ensuing from improper use of the product or use after the expiry date, incorrect storage or maintenance by the client, and/or by third parties when, without written consent of the User, the client or third parties have modified or tried to modify the good, have attached other goods to it that should not be attached to it, or have processed or adapted it in any other way. The client also cannot claim the warranty if the default has arisen from or is the result of circumstances that the User had no control over, such as weather conditions (including but not limited to extreme rainfall or temperatures), natural disasters, etc.

The client is obligated to arrange inspection of the delivered goods immediately after the goods are made available to him or her or the services in question have been carried out respectively. The client must check whether the quality and/or quantity of what has been delivered matches what was agreed upon and fulfills the requirements that the parties have agreed upon. Possible visual shortcomings should be reported to the User within seven days after delivery in writing. Possible invisible shortcomings should be reported to the User immediately, but in any case at the latest within fourteen days of the discovery in writing. The report should contain a description of the shortcoming with as much detail as possible, so that the User can respond adequately. The client must give the User the opportunity to research the complaint or have it researched.

If the client makes a claim within the mentioned timeframe, this does not postpone his payment obligation. In that case the client is also bound to acceptance of and payment for the ordered goods.

If a shortcoming is reported later, the client is no longer entitled to repair, replacement, or damages.

If it has been established that the good is defective and a complaint has been submitted in adequate time, the User will replace the defective item within a reasonable period of return or, if returning is

not reasonably possible, will provide written notification in respect of the defect by the client at the User's discretion, take care of the repair, or pay the client alternative compensation. In the event of replacement, the client shall be obligated to return the defective good to the User and to transfer its property right to the User, unless the User has indicated otherwise.

If it is concluded that the client's complaint was unfounded, any related costs including research costs, will be covered by the client in their entirety.

After the expiration of the warranty term, the client shall be liable for all repair or replacement costs including administrative, shipment, and delivery costs.

In deviation from the legal limitation periods, the limitation limit for all claims and defenses against the User and third parties involved by the User in executing an agreement amounts to one year.

#### **Article 9: Liability**

In the event that the User is liable, this liability will be limited to the provisions laid down in this article.

The User is not liable for damage, of any nature, that has arisen because the User has depended on incorrect or incomplete information provided to it by or on behalf of the client.

If the User is liable for any damage, the User's liability is limited to a maximum of twice the invoice value of the order, or to the part of the order to which the liability relates.

The User's liability is, in any case, always limited to the amount paid out by the insurer in the case concerned.

The User is only liable for direct damage.

Direct damage is exclusively understood as reasonable costs incurred in determining the cause and the extent of the damage (so long as determination is related to the damage in light of these terms and conditions), the potential reasonable costs incurred to have the defective performance of the User meet the terms of the agreement assuming that these can be attributed to the User and reasonable costs incurred in prevention or limitation of damage, and if the client can demonstrate that these costs have led to the limitation of the damage as intended in these terms and conditions. The User is never liable for indirect damage, including consequential damage, loss of profit, lost savings, and loss caused by interruption of operations.

The limitations of liability mentioned in this article do not apply if the damage is caused with intent or by gross negligence by the User, its management, or employees.

#### **Article 10: Indemnification**

The client indemnifies the User of any liability by third parties that suffer damage related to the execution of the agreement and of which the cause is attributable to someone other than the User. If the User should be addressed by virtue of this by third parties, the client is obligated to both extra-judicially and judicially assist the User, and immediately do everything that may be expected from him or her in that case. If the client fails to take adequate measures, the User has the right to take these measures without notice of default. All costs and damages on the part of the User and third parties that arise from the above are for the account and risk of the client.

#### **Article 11: Intellectual Property**

The User retains its rights and permissions that are awarded to it by copyright law and other intellectual laws. The User has the right to use the execution of an agreement at its side for increased knowledge for other purposes, provided that no strictly confidential information of the client will be disclosed to third parties.

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

In all legal relationships in which the User is a party, the law of the Netherlands applies exclusively if an agreement is carried outside the Netherlands, partially or in whole, or if the party that is involved with the legal relationship has its residence outside the Netherlands. The applicability of the Vienna Sales Convention is excluded.

The magistrate at the User's place of business is exclusively authorized to hear disputes, unless imperatively prescribed otherwise by law. The User, however, has the right to bring the dispute before the court competent by law.

The parties shall not appeal to the courts until they have made every effort to resolve such disputes amicably.

**Article 13: Location and modification of terms and conditions**

These Terms and Conditions are registered with the Chamber of Commerce in Emmen.

The most recently filed version or the version that was applicable during the time of the establishment of the legal relationship with the User shall apply.