

Article 1. General

1. These conditions are applicable to each offer, quote and agreement between EMERGO METAL TREATMENT, hereafter named: "Contractor", and a Client to which the Contractor has declared that these conditions are of effect, in so far as parties have not explicitly deviated from the present terms and conditions in writing.
2. These conditions likewise also apply to all agreements with Contractor, for the execution of which Contractor calls for the services of third parties.
3. The applicability of possible purchase or other conditions of the Client is explicitly rejected.
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. Contractor and the Client shall enter into negotiations in order to agree on new stipulations replacing the null and void conditions whereby, as far as possible, the purpose and intention of the original stipulations shall be observed.
5. If the Contractor does not constantly require strict compliance to these conditions, it does not imply that the provisions are not applicable, nor that the Contractor would lose the right, in any way whatsoever, to require strict compliance with the provisions of these terms and conditions.

Article 2. Quotations and offers

1. All quotes and offers from the Contractor shall be without obligation, unless a time limit for acceptance is stipulated. If a term of acceptance is not stipulated, no rights whatsoever can be derived from the quote or offer if the service which the quote or the offer concerns, is no longer available.
2. The Contractor cannot be held liable for the quotes or offers if the Client, 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 quotation or offer made, the Contractor shall not be bound to acceptance. The agreement then is not fulfilled and not of power or binding due to this deviation, unless stated otherwise by the Contractor.
5. A compiled quote does not oblige the Contractor 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. Contract duration; implementation period, transition-risks, execution and contract amendments; price increases;

1. The agreement between Contractor and Client is entered into for an unlimited period, 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 specific procedures or prior to the delivery of certain services, then this shall no longer be a fatal term. If the Contractor exceeds a term of execution the Client shall give notice of default in writing. The Contractor is to be offered a reasonable term of time to execute order in accordance to the agreement.
3. The Contractor shall execute the agreement according to his best insight and capability and in accordance to skilled craftsmanship. Among others, based on the state of art.
4. The Contractor has the right to have certain work carried out by a third party. The application of articles 7:404, 7:407 part 2 and 7:409 BW (Dutch Civil Code) is explicitly excluded.
5. Should the Contractor, or third parties hired in by the Contractor for the purpose of carrying out the related work on the location of the Client or location determined by the Client, then all expenses for reasonable facilities concerning the third parties shall be borne by the Client
6. The Client is obliged to accept the services at the moment that these are made available to him. If the Client refuses acceptance or is negligent in providing information or instructions that are necessary for the delivery, the Contractor shall then is empowered to store the products at the expense and risk of the Client. The risk of loss, damage or reduction in value shall be borne by the Client at the moment that the products are made available to the Client.
7. The Contractor is entitled to carry out the agreement in different phases and invoice each phase completed separately.

8. Should the contract be executed in phases, then the Contractor shall postpone the execution of production of the products that belong to the following phase until the Client has approved the previous phase in writing.
9. The Client shall take care that all data, which the Contractor states is necessary, or which the Client in all reasonableness should understand is necessary to bring the agreement to fulfilment, is provided to the Contractor in time. If the necessary data required for the execution of the agreement is not be provided in time, the Contractor shall be entitled to suspend and/or bring any expenses, resulting from the delay, as well as the normal tariffs, on the account of the Client. The time limit agreed on for completion does not start until after the Client has provided the Contractor with the required data. The Contractor cannot be held responsible for damage, of any type whatsoever, due to the Client providing the Contractor with incorrect and /or incomplete data.
10. 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 Client, the competent authorities et cetera, be changed and the agreement thereby amended with result that a change in quality and/or quantity takes place, then this can have consequences on what was originally agreed upon. Thereby the amount originally agreed upon can be increased or decreased. The Contractor shall, as far as is possible, make a quotation in advance. Due to an amendment of the agreement the original term of execution may also be amended. The Client accepts the possibility of amendment of the agreement, thereby is included the change in price and term of execution.
11. If the agreement is amended, thereby including a supplement, then the Contractor is entitled to first execute the task after approval has been given by the authorised person appointed by the Contractor and that the Client has consented to the price of execution and other conditions, under which is understood the time to be determined at which the execution shall take place. The failure or delayed execution of the amended agreement does not present a breach of the Contractor and is not a basis for the Client to terminate or annul the agreement.
12. Without being in default, the Contractor can refuse a request to amend the contract, if this may have consequences in quality or quantity for example in the context of work or services to be delivered.
13. If the Client should be in default concerning the fulfilment of that which he is obliged to the Contractor, then the Client is held liable for all damages on the side of the Contractor, whether direct or indirect.
14. If the Contractor and Client have agreed to a set honorarium or fixed price, the Contractor is none the less, at all times entitled to an increase of this honorarium or this price without that the Client, in that case, is entitled to terminate the agreement for this reason if the increase in price is the result of an authority or obligation of the law or legislation, or is due to a rise in the prices of raw materials, wages et cetera or on other grounds that were not predictable, in all reasonableness, at the time that the agreement was made.
15. If the price increase, otherwise than as result of an amendment of the agreement is greater than 10% and takes place within three months after having concluded the contract, then it is exclusively the Client who makes an appeal according to title 5 section 3 of book 6 BW (Dutch Civil Code) which entitles termination of the agreement by means of a written declaration, unless the Contractor:
 - Is still prepared to fulfil the agreement on basis of the originally concluded agreement;
 - If the price increase is result of an authorization or a duty of the Contractor as result of the law;
 - If stipulated that the delivery will take longer than three months after the delivery date stipulated in the agreement.
 - Or, at delivery of goods, if it is stipulated that the delivery shall take place three months after purchase.
16. Amendments in the work accepted that bring about extra costs, shall be charged as contract extras to the Client by the Contractor on basis of the tariffs charged by the Contractor. Contract extras shall be considered as all the work that the Contractor, on request and as instructed by the Client, or due to amended instructions, over and above that contained in the agreement that has been achieved. Article 7A: 1646 BW (Dutch Civil Code) does not apply.

17. The Client guarantees to take care that constructions delivered, provisions, materials and/or services provided by others than those of the Contractor, are as advanced and of same standard of quality, so that the workmanship performed by the Contractor can be carried out immediately and undisturbed, without delay or interruption.

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

1. The Contractor is entitled to postpone the performance of the duties or terminate the agreement, if the Client does not fulfil the duties in the agreement, only partially delivers or later than the term agreed on, or if the Contractor comes to know of circumstances that give good reason to fear that the Client shall not honour the obligations. If the Client after having concluded the agreement is requested to provide security for the gratification of the duties and this security does not occur, remains insufficient or is not honoured or if due to delay on the side of the Client cannot be expected from the side of the Contractor that the terms and conditions of the original agreement can be fulfilled. 2. Furthermore the Contractor is authorised to terminate the agreement if circumstances of that type occur which show that compliance to the agreement is impossible, or if other circumstances occur of that nature that unaltered maintenance of the agreement in what is reasonable cannot be required from the contractor.
3. If the agreement is terminated the advances from the Contractor to the Client are repayable on demand. If the Contractor postpones the fulfilment of the duties, he retains his rights under the law and agreement
4. If the Contractor goes on to postponement or termination, he is not, in any way whatsoever held liable for reimbursement of damage and related costs arising therefrom in any way whatsoever.
5. If the termination is attributable to the Client, the Contractor is entitled to a reimbursement for damage, thereby including the costs, whether from direct or indirect cause.
6. If the Client does not perform his duties as they are given in the agreement and this lack of conformity justifies termination, then the Contractor 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 Client, due to default is under obligation to reimburse damages or compensate these.
7. If the agreement is terminated by the Contractor in the mean time, then the Contractor, in consultation with the Client shall take care that transferral of the remaining duties shall be carried out by a third party. This, unless the Client is held accountable for the withdrawal. Should the transferral of the duties bring about extra costs for the Contractor, these shall then be charged to the Client. The Client is obliged to pay these expenses within the term mentioned, unless the Contractor states otherwise.
8. In the case of liquidation, of (request for) suspension of payment or bankruptcy, or seizure, if and so far as – the seizure is not lifted /countermanded within three months – at the expense of the client, of debt restructuring or another situation whereby the Client can no longer have free access to his assets, the Contractor 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 compensation. The advances of the Contractor to the Client are, in that case, forthwith repayable.
9. If the Client fully or partially annuls an order that has placed, the work 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 Client.

Article 5. Force Majeure

1. The Contractor is not obliged to fulfil any duties to/for the Client if hindered therein as result of a circumstance that is beyond his control, nor by virtue of the law, a legal matter or in the prevailing opinion for him.
2. Force majeure in these terms and conditions is understood, beside that concerning the laws and case-law is understood, all external causes, foreseen or unforeseen, over which the Contractor cannot exercise any influence, yet whereby the Contractor is not able to carry out his duties. Strikes in the company of the Contractor or of third parties included.

The Contractor has the right to appeal due to Force majeure if the circumstance (further) hindering fulfilment of the agreement, commences after the Contractor should have fulfilled his commitment.

3. During the period that the force majeure continues the Contractor can suspend the duties stated in the agreement. 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 the Contractor, at the time of the Force majeure occurring, has performed his duties, as stated in the agreement, and in the meantime has partially fulfilled these or shall fulfil these and that concerning the fulfilled part, in respect to the part to be fulfilled has accrued a separate partial value of which the Contractor is entitled to invoice separately. The Client is obliged to honour 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 Contractor, in the currency stated on the invoice, unless instructed otherwise, by the Contractor in writing. The Contractor is entitled to invoice periodically.
2. If the Client fails to make timely payment of an invoice, the Client is then in default by operation of the law. The Client 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 owed. The interest on the amount due shall be calculated from the moment that the Client is in default to the moment of payment of the full amount owed.
3. The Contractor is authorized to use payments made by the Client firstly in reduction of the costs, subsequently in respect of interest due and finally for reduction of the principle amount and current interest. The Contractor may, without thereby being in default, refuse an offer for payment, if the Client should indicate another sequence of payment allocation. The Contractor can refuse complete repayment of the principle amount, if the open post and accrued interest and collection costs are met.
4. The Client is never entitled to clearance of that which is still owed to the Contractor. Objections against a high invoice do not suspend the obligation to payment. The Client who 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.
5. 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.) of the amount to be recovered with a minimum of € 125,-.

Article 7. Retention of title

1. Within the context of the agreement, goods delivered/supplied by the Contractor remain the property of the Contractor until such time that the Client has met all obligations to the Contractor correctly, as stated in the agreement(s) made.
2. Deliveries by the Contractor, pursuant to paragraph 1, that fall under Retention of title, may not be resold nor used as a means of payment. The Client is not authorised to pledge or in any other way encumber goods that fall under Retention of title.
3. The Client should always do what is expected of him in all reasonableness, to safeguard the Contractor's property rights. If a third party should take possession of goods that fall under retention of ownership or lay hold of these, then the Client is duty-bound to notify the Contractor immediately. Furthermore the Client is obliged to insure and maintain insurance against fire, explosive and water damage as well as theft, also giving the Contractor access to this policy for inspection at his first request. In the case of a possible benefit from the insurance, then Contractor is entitled to this benefit. In as far as is necessary the Client binds himself to the Contractor in advance to provide his cooperation in all that necessary in that context or that may (seem) to be desired.
4. In the case of the Contractor wanting to exercise his property rights as noted in this article, then the Client shall give unconditional and irrevocable consent in advance to the Contractor to appoint third parties and authorising these to have access and entry to all premises where the possessions of the Contractor are being kept and to repossess these.

Article 8. Guarantees, inspection and advertising, limitation period

1. The services to be provided by the Contractor comply to the standard requirements and norms, that at the moment of delivery meet the requirements set in all reasonableness.
2. Guarantee only applies provided both parties have agreed expressly and in writing. If the guarantee provided by the Contractor concerns a matter that is produced by a third party, then the guarantee is limited to those, to which the producer of the matter supplies, unless stated otherwise.
3. Every form of guarantee is made null and void if a fault has developed as result of /or resulting from incompetency or incorrect use thereof or usage after expiry date, incorrect storage or maintenance carried out by the Client and /or third parties, without written consent of the Contractor, the Client or third party bringing about changes to the matter or trying to bring about changes, on which certain matters were mounted/fastened which ought not to be have been mounted/fastened if these were processed or adapted in a manner other than the prescribed method. The Client has even less rights on guarantee if the insufficiency is developed by, or is the consequence of circumstances in which the Contractor cannot exercise any influence, under which is included circumstances created/caused by the weather (for example yet not excluding, extreme rainfall or temperature) et cetera.
4. The Client is bound to examine the delivery immediately at the moment that the matters are made available to him respectively that the particular procedures have been carried out. Thereby the Client should examine if the quality and/or quantity of the delivery corresponds to what has been agreed upon and meets the demands that the parties agreed upon. Possible visual defects must be reported to the Contractor in writing within seven days of delivery. Possible non-visible defects must forthwith, or at the latest, fourteen days after detection, be reported in writing to the Contractor. The report must contain a highly detailed description of the defect, so that the Contractor is in a position to react adequately. The Client must give the Contractor the opportunity to investigate a complaint.
5. If the Client lays a complaint in time, it will not suspend his obligation for payment. In that case the Client is still bound to acceptance and payment of the remaining goods ordered and that for which an order had been placed to the Contractor.
6. If an insufficiency is reported later, then the Client does not have any right to restoration, replacement or compensation.
7. If it is noted that a matter is insufficient and as to that a complaint was lodged timely, then the Contractor shall, within a reasonable term, after return receipt thereof or, if returning, within all reason, is not possible, give notice in writing concerning the matter of insufficiency by the Client, the Contractor will then have the choice, of replacement, or restoration thereof be it compensation for replacement to the Client. In the case of replacement the Client is obliged to return the replaced matter to the Contractor and transfer ownership to the Contractor, unless the Contractor wishes otherwise.
8. If it is determined that a complaint is unfounded, then the costs incurred as result of this, including investigation costs, which would be at the contractor's expense, shall be integrally for the account of the Client.
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 Client.
10. Contrary to the legal limitation periods, the limitation period for all claims and defences against the Contractor and third parties involved by the Contractor, in fulfilling the agreement, amounts to one year.

Article 9. Liability

1. If the Contractor should be liable, then this liability is limited to that which is governed in this provision.
2. The Contractor is not liable for damage/s, of any type whatsoever, arising from being provided with incorrect or incomplete data by the Client or a person acting on behalf of the Client.
3. If the Contractor should be liable for any kind of damage, the liability of the Contractor is limited to a maximum of two times the invoice value of the order, at least to that part of the order concerning the liability.
4. The liability of the Contractor is, in any case, still limited to the amount of the compensation made good by his insurer, if this were to arise.
5. Contractor 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 the insufficient performance of the Contractor to answer to the agreement, in as much as these can be attributed to the Contractor and reasonable costs made for prevention or limitation of damage, in so far as the Client proves that these costs have led to limiting direct damage as is meant in these general conditions. Contractor is never liable for indirect damage, thereby understood as consequential damage, lost profits, lost savings and damage by stagnation of business.
7. The included limitations in this article of liability shall not apply if the damage is deliberate or due to gross negligence of the Contractor or of his senior subordinates.

Article 10. Indemnity

1. The Client indemnifies Contractor of possible claims by third parties, which, in connection with the execution of the agreement suffer loss and the cause of which others than the Contractor is held responsible for. If the Contractor in this respect is approached by third parties, then the Client is obliged to assist the Contractor both judicial as well as extrajudicial and forthwith to do all that is expected of him in that case/ situation. If the Client fails to take adequate measures, then the Contractor, without notice of default, is entitled to do so himself. All costs and damage on the side of the Contractor and third parties arising from this, come integral on account and risk of the Client.

Article 11. Intellectual property

1. Contractor maintains the right and authority that are due to him on grounds of the Copyright and other intellectual property laws and regulation. Contractor is authorized to use his increased knowledge gained by the implementation of an agreement for other purposes, in so far as there is no strictly confidential information of the Client made known to third parties.

Article 12. Applicable law and dispute

1. In all legal matters, in which the Contractor is a party, exclusively the Dutch law shall be applicable, also if due to an obligation fully or partially, in a foreign country is being implemented, or if the opposite party resides there. The applicability of the Vienna Sales Convention is excluded.
2. The judge of the location of the Contractor is exclusively authorized to take note of disputes, unless the law forcefully prescribes otherwise. Never the less the Contractor has the right/is entitled in accordance 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 to of the dispute.

Article 13. 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 Contractor.
3. The Dutch text of these General conditions is always mandatory for the explanation thereof.