

General Delivery and Payment Conditions for the galvano-technical industry



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Issued by the Vereniging NGO-SBG,
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Article 1. General

1. These General Conditions are applicable to all our offers and agreements for the provision of goods, labour and/or services, save for changes that are expressly agreed between the parties in writing. For the purpose of these Conditions services shall also be understood to mean: the contracting of work.
2. The applicability of general conditions of the client is rejected, unless and save in so far as these are accepted by us in writing.

Article 2. Offers

All our offers are subject to contract; we will not be bound until we have accepted an order in writing, or, if no written order confirmation is issued, until we have started performing the work.

Article 3. Price

1. Unless agreed otherwise in writing, all our prices are calculated net for delivery "ex Works" as defined in the Incoterms as they apply on the date of the offer.
2. The prices we quote are at all times based on the quantities communicated by the client. In the event that the order is for a smaller quantity than was stated in the request for an offer or in the offer itself, we shall not be bound to the quoted price.
3. If after the date of the offer an increase in the prices of raw materials, salaries, social insurance, energy, wages and other cost price determining factors occurs, we may increase our prices correspondingly. The foregoing is also applicable to cost increases due to government measures.
4. If the goods that are offered to us for treatment do not correspond, as regards composition and/or condition of the surface, with the information we had at the time we made our offer, we may charge the resulting additional costs, after notifying the client, to the client.
5. If, during the treatment of goods, it becomes apparent that the agreed quality cannot be attained and it is decided, in consultation with the client, to discontinue the treatment, we shall be entitled to charge the costs already incurred to the client. The client shall not be entitled to any compensation in this regard.
6. All quoted prices are in Dutch currency and are exclusive of VAT.

Article 4. Payment

1. All invoiced amounts are payable within 30 days after the date of the invoice. All payments are to be effected without any deduction, reduction, or set-off.
2. If a term of payment is exceeded we may charge interest as from the due date, at a rate of three percentage points above the statutory interest rate in the Netherlands, as set forth in Sections 6:119a and 6:120.2 of the Dutch Civil Code, as well as all legal and other costs incurred in the collection of the debt, without any prior demand or notice of default.
3. We may demand that security be provided for compliance with the payment obligations, or full or partial prepayment, or may ship the goods cash on delivery only.
4. Complaints regarding invoiced amounts and other remarks regarding invoices must be submitted in writing within 14 days after the date of the invoice, failing which we are under no obligation to consider the complaint.
5. If the client is declared bankrupt, dies, or is placed under guardianship, or if prejudgment or executorial attachment is levied on its assets or income or part thereof, or if it is granted a moratorium, or an administrator is appointed, the full contract price/agreed price, or the remainder thereof, will be immediately due and payable.

Article 5. Packaging

1. We will take care of proper packaging where necessary; all packaging will be charged at cost and will not be taken back.
2. We may comply with any special packaging methods requested by the client, using packaging materials provided by the client; the additional costs hereof will be charged to the client.
3. The necessity of using packaging is determined by us at our own discretion.

Article 6. Shipment

1. The transport of the goods to our plant and from our plant to the place of destination is carried out for the account and risk of the client; the foregoing is also applicable if we carry out the transport ourselves. Transport shall be understood to include the loading and unloading of the goods. The client is obliged to supervise and assist with the unloading.
2. If the transport is carried out by third parties, any claims we might have against the haulier arising from damage to or loss of the goods and which may be asserted against the haulier will be assigned to the client.

Article 7. Delivery periods, passing of delivery and risk

1. The agreed delivery period is non-binding to us, but we will endeavour to meet it to the best of our abilities and in good faith.
2. The delivery period starts on the day on which we have confirmed the order in writing and all information, tools and materials we require and that are to be provided by the client are in our possession. After the goods concerned have left our plant, or when we have informed the client in writing that the goods are ready for shipment, they are considered to have been delivered. The place of delivery is consequently our plant, also if carriage paid is agreed. If part deliveries are agreed, each individual shipment will be considered as having been delivered separately.
3. In the event of a change in an order, the delivery period will be adjusted correspondingly.
4. The client shall in no event assert any right towards us for compensation, termination of the agreement, or non-fulfilment of any obligation due to the exceeding of the delivery periods, irrespective for what reason, including an event of force majeure, arising for the client from the agreement it has concluded with us.
5. In the event that the delivery period is exceeded due to an event of force majeure, such event shall also be understood to include: all circumstances over which we have no control, both unforeseen and already foreseeable at the time when the order was granted, as a result of which production is interrupted or comes to a complete standstill.
6. The goods are delivered "ex Works" as defined in the Incoterms applicable at the time of the offer. As regards the agreed delivery period, the goods are deemed to have been delivered as soon as they are ready for shipment at our plant and we have notified the client accordingly.
7. As soon as the goods are deemed to have been delivered within the meaning of paragraph 6, above, the risk of the loss of the goods and of all direct and indirect damage that may be caused to or by these goods for the client or for third parties shall be borne by the client. The client shall indemnify us against any third-party claims in this regard.

Article 8. Guarantee and complaints

1. Subject to the following restrictions, we warrant that the surface treatment we carry out shall be in accordance with the surface treatment we have offered and/or agreed with the client.

2. Our guarantee extends solely to the soundness of the performance of the work we carry out.
3. Unless agreed otherwise in writing in advance, the standard that is applied with respect to serial and bulk orders is a paid output ratio of 3%. The output ratio will be determined by comparing the total amount of the quantities we have treated on the one hand, with the total amount of the quantities reported by the client as rejected and returned to us, on the other; both of them calculated over the same period.
4. Any complaints due to incomplete or incorrect delivery or objections due to manifest defects must be reported to us in writing within 14 days after delivery of the goods, failing which our guarantee commitment lapses. This guarantee commitment also lapses if the goods have undergone further treatment, or have been installed or built in.
5. However, if a test or inspection is carried out at our plant or premises, the objections must be made at the end of such test or inspection at the latest.
6. The guarantee does not apply if the client's complaints arise from a failure to provide us with information, or to do so in time or fully, which the client was obliged to provide, or which was requested by us; nor if the client failed to provide us with the necessary measuring tools for maintaining the indicated measures, or to do so in time or fully.
7. The guarantee furthermore does not apply if the basic material is of insufficient quality to achieve the final result intended by the client by carrying out the agreed work.
8. We do not carry out any entry check. As a result, we are not liable in any way for inaccuracies that are due to defects in the material and/or the parts at the moment when they were made available to us, or for the quantity or amount of them.
9. The correctness of the requested treatment is at all times for the account and risk of the client, unless we have advised on the requested treatment in writing in advance. If the client deviates from the advice we have given, the treatment will be for its account and risk as well.
10. If the client is able to demonstrate, subject to what is provided above and elsewhere in this article, that we failed to perform the ordered work in accordance with the quality requirements we offered and/or that were agreed with the client, we will treat the goods again for our account.
11. Without prejudice to what is stated above in this article, we are not required to offer any guarantee with respect to goods and materials that are supplied to us by other suppliers, other than the guarantee offered to us by these suppliers.

Article 9. Risk

1. In addition to Article 7.7., damage to goods caused by the destruction of the packaging will be for the account and risk of client as well.
2. If, after the delivery period has expired, the client has not taken delivery of the goods (against payment), or if it is impossible to take delivery of the goods, the goods will be kept at the client's disposal for a period of three months, during which period they will be stored for the account and risk of the client.
3. If, after having been summoned to do so in writing, the client fails to take delivery of the goods after the period mentioned in paragraph 2 has expired, we will be entitled to either sell the goods, or have them sold, for and on behalf of the client, subject to the obligation to pay the proceeds to the client after deducting the debt owed to us, including the storage costs; or to destroy the goods, or have them destroyed, depending on the nature of the goods and the applicable statutory provisions. In the latter instance the costs for destroying the goods (whether or not as prescribed by the government) will be for the client's account.
4. If, in accordance with paragraph 3, we wish to proceed to sell or destroy the goods, we will not do so until after having notified the client in writing of this intention at least one week in advance.

Article 10. Liability

1. Our liability is limited to fulfilling the guarantee commitment mentioned in article 8 hereof; any other claim for compensation is herewith excluded.

2. Pursuant to paragraph 1 hereof, we are not obliged to compensate costs, damages or interests incurred in connection with personal injury, damage to moveable and immoveable property, the loss of delivered goods and/or the value added thereto, due to these goods becoming or turning out to be fully or partially unfit for use, or prejudicing business interests caused to the client or third parties, either directly or indirectly, unless the client is able to demonstrate that this may be attributed to the intent or gross negligence on our part. Employees are in this regard only to be equated with us in so far as they have acted in accordance with our explicit instructions.
3. The client shall indemnify us and hold us harmless for and against all costs, damages and interests that may directly or indirectly arise for us from third-party claims that may be brought against us in connection with the agreement we have concluded with the client, in connection with events, acts or omissions for which we are not liable in accordance with paragraphs 1 and 2, above. This indemnification shall also apply to any infringement of third-party patents, licenses, and trademarks, in so far as these are related to goods and materials supplied to us by the client and/or treatment procedures prescribed by the client.
4. Goods belonging to the client or to third parties that are in our care in connection with the performance of the instructed work, are in our care for the risk of the client or that third party. We carry no insurance for these goods. In the event of damage to or loss of these goods the client shall indemnify us against any third-party claims.

Article 11. Tools

Any tools and devices construed by us or that we instruct third parties to construe and that are necessary for performing the work, will remain our property, even when the costs thereof are charged to the client. This applies also to knowhow etc. that we develop, whether or not together with the client.

Article 12. Imputable shortcoming; cancellation

1. In all instances of an imputable shortcoming on the part of the client, the client is obliged to compensate us the reasonable legal costs and costs of transport, valuation, and experts' advice that we incur in this connection, in addition to and apart from the statutory compensation of loss, costs and interests.
2. If the client annuls the order, the client shall be obliged to take over all materials and raw materials we have purchased, either on forward contract or otherwise, and regardless of whether they are processed or treated, at cost, including wages. The client shall furthermore be obliged to indemnify us against any claims arising from the cancellation of the order.

Article 13. Applicable law; domicile

1. The Courts in the Netherlands have exclusive jurisdiction with respect to any of our agreements and these agreements are governed by Netherlands law as it applies in the Kingdom of the Netherlands in Europe.
2. The parties choose domicile in the place where the client has its residence or office.