General Terms and Conditions BMTEC B.V.

February 2025 English translation of the Dutch "Algemene voorwaarden BMTEC B.V." (February 2025)

Definitions

Where these terms and conditions refer to the seller, this means the private limited company "BMTEC B.V.", with its registered office at Wattstraat 3 (7825 GL) in Emmen, the Netherlands. The seller also includes the persons employed by it or other persons engaged by or on behalf of it.

Where these general terms and conditions refer to the buyer, this means any person with whom BMTEC B.V. enters into an agreement, to or for whom BMTEC B.V. makes an offer, to or for whom BMTEC B.V. delivers, or to or for whom BMTEC B.V. performs a service.

Article 1: General

These terms and conditions apply to every agreement yet to be concluded with the buyer, and to every offer, quotation and agreement between the buyer and the seller, as well as to all other legal relationships between the seller and the buyer. These terms and conditions also apply to agreements with the seller for the performance of which the seller needs to involve third parties.

The applicability of any purchasing or other terms and conditions of the buyer is expressly rejected.

Arrangements that conflict with or supplement these terms and conditions are only valid if and insofar as they have been confirmed in writing by the seller, and then only for the transaction concerned.

If the seller does not always require strict compliance with these terms and conditions, this does not mean that the provisions thereof do not apply, or that the seller would in any way lose the right to require strict compliance with the provisions of these terms and conditions in other cases.

The seller is entitled at all times to amend or revise its general terms and conditions.

Article 2: Quotations and offers

All quotations and offers made by the seller via the website https://cutwise.bmtec.nl/, by e-mail or through any other medium are without obligation and do not bind the seller. No rights whatsoever can be derived from written or electronic quotations or offers. A quotation or offer from the seller to the buyer only binds the seller if it has been made in writing or electronically and if the buyer accepts it in writing before the expiry of the acceptance period stated therein.

The seller cannot be held to its quotations or offers if the buyer can reasonably understand that the quotations or offers, or a part thereof, contain an obvious mistake or clerical error.

The prices stated in a quotation or offer are exclusive of VAT and other government levies and of any costs to be incurred in connection with the agreement, including travel and accommodation, shipping and administration costs, unless stated otherwise.

If the acceptance deviates (whether or not on minor points) from the offer included in the quotation or offer, the seller is not bound by it. The agreement is then not concluded in accordance with this deviating acceptance, unless the seller indicates otherwise.

A composite price quotation does not oblige the seller to perform part of the order for a corresponding part of the price quoted. Offers or quotations do not automatically apply to future orders.

An agreement to which these general terms and conditions apply is concluded as soon as the seller expressly confirms the buyer's order in writing or electronically, or as soon as the seller proceeds to carry out the order without further notice to the buyer.

Article 3: Performance and amendment of the agreement

The seller will perform the agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship, all on the basis of the state of the art known at that time.

The seller has the right to have certain work carried out by third parties. The applicability of Articles 7:404, 7:407(2) and 7:409 of the Dutch Civil Code is expressly excluded.

The buyer shall ensure that all data which the seller indicates are necessary, or which the buyer should reasonably understand to be necessary, for the performance of the agreement are provided to the seller in good time.

If the data required for the performance of the agreement have not been provided to the seller in good time, the seller has the right to suspend the performance of the agreement and/or to charge the buyer for the additional costs resulting from the delay at the rates customary at that time. The period for performance does not commence until the buyer has made the data available to the seller.

The seller is not liable for damage of any kind arising because the seller relied on incorrect and/or incomplete data provided by the buyer.

If, during the performance of the agreement, it becomes apparent that it is necessary to amend or supplement the agreement for its proper performance, the parties will adjust the agreement in good time and in mutual consultation.

If the nature, scope or content of the agreement is changed, whether or not at the request or instruction of the buyer, the competent authorities et cetera, and the agreement is thereby changed in qualitative and/or quantitative terms, this may have consequences for what was originally agreed. As a result, the amount originally agreed may also be increased or decreased. The seller will, as far as possible, provide a price quotation for this in advance. An amendment of the agreement may also change the originally stated period for performance. The buyer accepts the possibility of amendment of the agreement, including the change in price and period for performance.

Without thereby being in default, the seller may refuse a request to amend the agreement if this could have qualitative and/or quantitative consequences, for example for the work to be carried out or the goods to be delivered in that context.

Article 4: Price increase; suspension and prepayment

If, after the date on which the agreement is concluded, one or more cost price factors increase – even if this occurs as a result of foreseeable circumstances – the seller is entitled to increase the agreed price accordingly and to charge it in full to the buyer.

The seller has the right, for reasons of its own, not to accept orders, or to accept them only if, in its reasonable opinion, the financial position of the buyer gives cause to require prepayment or security, and pending this to suspend the performance of the agreement in whole or in part. If this prepayment is not made or the security is not provided to the seller's reasonable satisfaction, the seller is entitled to dissolve the agreement without a written declaration and without judicial intervention, insofar as the law permits.

The seller may require full prepayment from the buyer for the first agreement.

Article 5: Delivery and delivery time

Delivery takes place ex works/warehouse of the seller, unless agreed otherwise.

Delivery is deemed to have taken place at the moment the goods have left the seller's factory or warehouse, or at the moment the seller has informed the buyer that the goods are ready for dispatch, whichever is earlier.

The buyer is obliged to take delivery of the goods at the moment they are made available to it. The risk of loss, damage or depreciation passes to the buyer at the moment the goods are at the buyer's disposal.

If the buyer refuses to take delivery or fails to provide information or instructions necessary for the delivery, the seller is entitled to store the goods at the buyer's expense and risk.

If delivery is postponed or expedited at the buyer's request, the buyer is obliged to reimburse the associated costs.

The seller is entitled to charge additional labour hours if the delivery is delayed by circumstances not attributable to the seller.

If a period has been agreed or stated for the delivery of certain goods, this is never a strict (fatal) deadline. The agreed delivery times are subject to unforeseen circumstances and do not entitle the buyer to compensation and/or dissolution of the agreement, unless the buyer proves intent or gross negligence on the part of the seller. If a period is exceeded, the buyer must give the seller written notice of default, granting the seller a reasonable period in which to still perform the agreement.

Article 6: Special provision on delivery time – CutWise

Through the seller's online application called CutWise (https://cutwise.bmtec.nl/), the buyer can submit a request for a quotation to the seller. In the request for a quotation, the buyer can specify a desired delivery time. When the buyer subsequently accepts the quotation issued, the seller sends an order confirmation. The order confirmation confirms a delivery time.

If the seller does not meet the delivery time confirmed in the order confirmation – for an order received through the online application CutWise – the parts/products concerned will be free of charge. This only applies to products delivered late. If part of the order has been delivered on time, the products delivered on time are not free of charge. The foregoing only applies to orders with a value not exceeding € 25,000.00 excluding VAT. The buyer is not released from its payment obligation if the seller cannot meet the delivery period due to unforeseen circumstances.

Unforeseen circumstances will in any event include (but are not limited to):

- natural disasters;
- shortages of energy and raw materials;
- strikes;
- epidemics and/or pandemics;
- transport bottlenecks or obstructions through no fault of the seller, in particular delays in delivery through no fault of the seller, for example due to accidents, theft of the goods or unintentional loss of or damage to them;
- general curfews and/or contact bans;
- operational obstructions through no fault of the seller, for example due to fire, damage to machines or theft of goods;
- all other obstructions that, objectively, were not caused by the seller.

This provision only applies to orders to be delivered in the Netherlands, Germany and Belgium.

Article 7: Dissolution and early termination

The seller is entitled to dissolve the agreement if circumstances arise that are of such a nature that performance of the agreement is impossible, or if other circumstances arise that are of such a nature that the seller cannot reasonably be expected to maintain the agreement unchanged.

If the agreement is dissolved, the seller's claims against the buyer become immediately due and payable. If the seller suspends the performance of its obligations, it retains its rights under the law and the agreement.

If the seller proceeds to suspension or dissolution, it is in no way obliged to compensate any damage and costs arising as a result in any way.

If the dissolution is attributable to the buyer, the seller is entitled to compensation for the damage, including the costs, arising directly and indirectly as a result.

If the buyer fails to fulfil its obligations under the agreement and this non-fulfilment justifies dissolution, the seller is entitled to dissolve the agreement forthwith and with immediate effect without any obligation on its part to pay any damages or compensation, whereas the buyer, on account of its default, is obliged to pay damages or compensation.

If the agreement is terminated early by the seller, the seller will, in consultation with the buyer, arrange for the transfer of work still to be performed to third parties, unless the termination is attributable to the buyer. If the transfer of the work entails additional costs for the seller, these will be charged to the buyer. The buyer is obliged to pay these costs within the period stated for this, unless the seller indicates otherwise.

In the event of liquidation, (an application for) a moratorium on payments or bankruptcy, attachment – if and insofar as the attachment has not been lifted within three months – against the buyer, debt restructuring or any other circumstance as a result of which the buyer can no longer freely dispose of its assets, the seller is free to terminate the agreement forthwith and with immediate effect or to cancel the order or agreement, without any obligation on its part to pay any damages or compensation. In that case, the seller's claims against the buyer are immediately due and payable. If the buyer cancels an order placed in whole or in part, the work carried out and the goods ordered or prepared for it, plus any related supply, removal and delivery costs and the working time reserved for the performance of the agreement, will be charged to the buyer in full.

Article 8: Force majeure

The seller is not obliged to fulfil any obligation towards the buyer if it is prevented from doing so as a result of a circumstance that is not due to its fault and for which it is not accountable by virtue of the law, a juridical act or generally accepted views.

Force majeure will in any event include (but is not limited to):

a) business disruption or business interruption of any kind and however caused;
b) delayed or late delivery by the seller's suppliers, or any of them, or by third parties;
c) transport difficulties and transport obstructions of any kind that hinder or obstruct transport to the seller's business or from the seller's business to the buyer;
d) import or export restrictions of any kind.

The seller is also entitled to invoke force majeure if the circumstance that prevents (further) performance of the agreement occurs after the seller should have fulfilled its obligation.

The seller may suspend its obligations under the agreement for as long as the force majeure continues. If this period lasts longer than two months, either party is entitled to dissolve the agreement, without any obligation to compensate the other party for damage.

Insofar as the seller, at the time the force majeure occurs, has already partly fulfilled its obligations under the agreement or will be able to fulfil them, and the part fulfilled or to be fulfilled has independent value, the seller is entitled to invoice the part already fulfilled or to be fulfilled separately. The buyer is obliged to pay this invoice as if it concerned a separate agreement.

Article 9: Payment and collection costs

Payment must always be made within 30 days of the invoice date, in a manner to be indicated by the seller and in the currency in which the invoice was issued, unless the seller indicates otherwise in writing. The seller is entitled to invoice periodically.

The purchase price becomes immediately due and payable in full at the moment the buyer dies, is declared bankrupt, applies for a moratorium on payments, becomes subject to the statutory debt restructuring scheme, is placed under guardianship, discontinues or liquidates its business or makes material changes to it, has its assets placed under administration, or has an attachment levied against it.

If the buyer fails to pay an invoice on time, the buyer is in default by operation of law. The buyer then owes interest of 2% per year for non-commercial transactions, unless the statutory interest is higher, in which case the statutory interest is owed, and 8% per year for commercial transactions, unless the statutory commercial interest is higher, in which case the statutory commercial interest is owed. The interest on the amount due will be calculated from the moment the buyer is in default until the moment the full amount owed has been paid.

The seller has the right to apply payments made by the buyer first in reduction of the costs, then in reduction of the interest that has fallen due and finally in reduction of the principal sum and the current interest. The seller may, without thereby being in default, refuse an offer of payment if the buyer designates a different order for the allocation of the payment.

The buyer is never entitled to set off any amount it owes to the seller. Objections to the amount of an invoice do not suspend the payment obligation.

A buyer who is not entitled to invoke Section 6.5.3 of the Dutch Civil Code (Articles 231 to 247 of Book 6) is likewise not entitled to suspend payment of an invoice for any other reason.

If the buyer is in default or in breach in the (timely) fulfilment of its obligations, all reasonable costs of obtaining payment out of court will be borne by the buyer. The extrajudicial costs are calculated on the basis of what is customary in Dutch debt collection practice, currently the calculation method according to the scale set out in the Dutch Extrajudicial Collection Costs (Compensation) Decree (Besluit vergoeding buitengerechtelijke incassokosten). If, however, the seller has incurred higher collection costs that were reasonably necessary, the costs actually incurred qualify for reimbursement. Any judicial and enforcement costs incurred will also be recovered from the buyer.

Article 10: Retention of title

Everything delivered by the seller under the agreement remains the property of the seller until the following has been fully complied with:

- the buyer has paid for the consignments delivered and has also paid all other outstanding amounts;
- the buyer has paid for the work and/or ancillary services performed or to be performed by the seller which the seller is obliged to perform under the agreement for the performance of work and/or the delivery of goods;
- the buyer has fulfilled any obligations to pay damages arising from the buyer's failure to perform an agreement requiring the delivery of goods.

Goods delivered by the seller that are subject to retention of title pursuant to the foregoing may not be resold and may never be used as a means of payment. The buyer is not authorised to pledge or otherwise encumber the goods subject to retention of title. The buyer must at all times do everything that may reasonably be expected of it to safeguard the seller's property rights. If third parties attach the goods delivered under retention of title or wish to establish or assert rights over them, the buyer is obliged to inform the seller immediately.

If the buyer fails to fulfil its obligations or there is a well-founded fear that it will not do so, the seller is entitled to remove, or have removed, delivered goods subject to the said retention of title from the buyer or from third parties holding the goods on the buyer's behalf. The buyer is obliged to cooperate fully with this, on pain of a penalty of 10% of the amount owed by it per day, with a minimum of € 300. The buyer undertakes to cooperate, within reasonable limits, with all measures the seller wishes to take to protect its property rights in respect of the goods.

Article 11: Warranties, inspection and complaints, limitation period

The goods to be delivered by the seller comply with the customary requirements and standards that can reasonably be imposed on them at the time of delivery and for which they are intended in normal use.

The buyer will inspect the product no later than 14 days after delivery. If this period has expired without written and specified notification of well-founded complaints, the product is deemed to have been accepted.

The buyer must check the delivered goods immediately after delivery for any deviations from what was agreed. Any complaints must be submitted to the seller in writing within 14 working days of the delivery date. After the expiry of the aforementioned period, the delivered goods are deemed to have been irrevocably and unconditionally accepted by the buyer. The buyer must keep the defective goods available to the seller. Submitting a complaint does not suspend the buyer's payment obligation in respect of the goods in dispute.

Quality requirements or quality standards for goods to be delivered by the seller must be expressly agreed. Minor deviations and differences in quality, colour or finish that are customary in the industry or technically unavoidable do not constitute grounds for a complaint.

The right to complain lapses if the goods have been processed or if the original condition of the delivered goods has been changed in any other way. The burden of proof that the delivered goods do not conform to the agreement lies with the buyer. Nor is the buyer entitled to warranty if the defect has arisen from or is the result of circumstances beyond the seller's control, including weather conditions (such as, but not limited to, extreme rainfall or temperatures) et cetera.

If the warranty provided by the seller concerns an item produced by a third party, the warranty is limited to the warranty provided by the manufacturer of the item, unless stated otherwise.

The seller's warranty obligation does not extend beyond the expressly agreed quality provisions or expressly agreed quality standards.

Any warranty of the seller does not apply:

a) if and for as long as the buyer is in default towards the seller;
b) if the products have been exposed to abnormal conditions or have been handled carelessly or improperly;
c) if the seller has not been given the opportunity to investigate the defect within 5 working days of its discovery;
d) if one year has passed since delivery;
e) in the event of normal wear and tear.

The notification must contain as detailed a description of the defect as possible, so that the seller is able to respond adequately. The buyer must give the seller the opportunity to investigate (or have investigated) a complaint.

If the buyer complains in time, this does not suspend its payment obligation. In that case, the buyer also remains obliged to take delivery of and pay for the other goods ordered and for whatever it has instructed the seller to do.

If a defect is reported later, the buyer is no longer entitled to repair, replacement or compensation.

If it is established that an item is defective and a complaint about it has been made in time, the seller will, at its option, replace the defective item or arrange for its repair, or pay the buyer replacement compensation for it, within a reasonable period after receiving the item back or, if return is not reasonably possible, after written notification of the defect by the buyer. In the event of replacement, the buyer is obliged to return the replaced item to the seller and to transfer ownership of it to the buyer, unless the seller indicates otherwise.

If it is established that a complaint is unfounded, the costs arising as a result, including the investigation costs incurred by the seller, will be borne in full by the buyer.

After the warranty period has expired, all costs of repair or replacement, including administration, shipping and call-out costs, will be charged to the buyer.

Article 12: Liability

The seller's liability is limited to the fulfilment of the warranty obligations described in Article 10 of these terms and conditions.

Except in the event of intent or gross negligence on the part of the seller, and subject to the provisions of the previous paragraph, all liability of the seller, such as for business losses, indirect damage and damage resulting from liability towards third parties, is excluded.

Accordingly, the seller is also not liable for:

- infringement of patents, licences or other rights of third parties as a result of the use of data provided by or on behalf of the buyer;
- damage to or loss of, from whatever cause, raw materials, semi-finished products, models, tools and other items made available by the buyer.

Unless there is intent or gross negligence on the part of the seller, damage is in all cases only eligible for compensation up to the maximum amount paid out in the case concerned under the insurance taken out by the seller.

Damages owed by the seller will never exceed the amounts, excluding VAT, invoiced and invoiceable by the seller to the buyer under the agreement concerned, unless there is intent or gross negligence on the part of the seller.

The buyer is obliged to indemnify and hold the seller harmless against all claims by third parties for compensation of damage for which the seller's liability is excluded in these terms and conditions in its relationship with the buyer.

Article 13: Indemnification

The buyer indemnifies the seller against any claims by third parties who suffer damage in connection with the performance of the agreement and the cause of which is attributable to parties other than the seller. If the seller is held liable by third parties on that ground, the buyer is obliged to assist the seller both in and out of court and to do without delay everything that may be expected of it in that case. Should the buyer fail to take adequate measures, the seller is entitled to do so itself without notice of default. All costs and damage arising as a result on the part of the seller and third parties are entirely for the account and risk of the buyer.

Article 14: Intellectual property

The seller reserves the rights and powers to which it is entitled under the Dutch Copyright Act (Auteurswet) and other intellectual property laws and regulations. The seller has the right to also use the knowledge it has gained through the performance of an agreement for other purposes, provided that no strictly confidential information of the buyer is disclosed to third parties.

Article 15: Choice of forum and governing law

All legal relationships to which the seller is a party are governed exclusively by Dutch law, with the exception of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention, CISG).

The court in the place where the seller has its registered office has exclusive jurisdiction to hear disputes, unless mandatory law provides otherwise. This provision is solely for the benefit of the seller. The seller therefore also reserves the right to bring legal proceedings against the buyer under the law of the country of, and before the competent court of, the place where the buyer is domiciled or established.

The parties will only apply to the court after they have made every effort to settle a dispute by mutual consultation.