

General Terms and Conditions of Trademark Leasing & Trading B.V.

Article 1 – Definitions

1.1 In these general terms and conditions, the following terms will be defined as follows, unless expressly indicated otherwise.

Trademark : the private limited company Trademark Leasing & Trading B.V., Ch. of Comm. Number 24366479

Other Party: the parties purchasing goods and/or services from Trademark;

Agreement: the agreement between Trademark and the other party.

Article 2 – Applicability

- 2.1 These general terms and conditions apply to any quotation, offer and agreement between Trademark and the other party, unless and insofar as these terms and conditions or the provisions therein are explicitly departed from by the parties in writing.
- 2.2 The applicability of any general terms and conditions applied by the other party is explicitly dismissed.
- 2.3 If one or more provisions in these general terms and conditions are or become void or unenforceable, the other provisions of these general terms and conditions will remain in full force and effective. The void or voided provisions will be replaced by Trademark, duly observing the objective and purport of the original provision(s) as closely as possible.

Article 3 – Quotations / formation of agreement

- 3.1 All quotations of Trademark are without obligation and can only be considered to be an invitation to submit an offer. The offers issued by Trademark are also without obligation and valid for a period of thirty days only, unless explicitly stated otherwise. Trademark will only be bound by the offer if and insofar it has been accepted by the other party in writing, within thirty days and without any reservations or changes.
- 3.2 The prices as listed in the quotations and offers of Trademark do not include VAT and other government levies, nor do they include costs to be incurred within the framework of the agreement, unless stated otherwise.
- 3.3 A compound quotation does not oblige Trademark to deliver or perform part of the goods and/or services included in the quotation or offer at a proportional part of the quoted price.
- 3.4 Quotations and offers do not automatically apply to any repeat orders and future instructions of the other party.
- 3.5 An agreement is formed by Trademark confirming an instruction in writing and/or starting the execution thereof. Verbal arrangements and stipulations do not bind Trademark until and insofar as they have been confirmed by Trademark in writing.
- 3.6 If a quotation, offer or conformation of order is based on data provided by or on behalf of the other party, the other party guarantees the correctness thereof. Trademark cannot be held liable for costs or damage arising from such supply of incorrect data.

Article 4 – Scope of the delivery of goods and/or the provision of services

- 4.1 Quotations and offers of Trademark and subsequent agreements only refer to the goods and services specified therein.
- 4.2 Dimensions, weights and other data stated in the technical specifications and suchlike are indicative and by approximation only. Trademarks reserves a tolerance of 5% with regard to any capacities agreed.

Article 5 - Delivery

- 5.1 If a date or term has been agreed with Trademark on or within which the goods must have been delivered or the services performed, then these dates or terms are indicative only and by no means a final deadline.
- 5.2 The other party ensures that all data and/or equipment, of which Trademark indicates that they are required or with regard to which the other party can reasonably understand that they are required for the execution of the agreement, must be made available to Trademark in a timely fashion. The agreed term

of delivery does not commence until Trademark has received the data and/or equipment referred to in the previous sentence. If for the delivery of goods or the performance of services a certain date has been set on or before which Trademark must have delivered and/or on or before which Trademark must have performed certain services, all this with due observance of the provisions in paragraph 1, Trademark will be entitled to suspend the execution of the agreement until the data and/goods referred to have been made available to Trademark. The date set for the delivery of goods or the performance of services will be extended accordingly.

- 5.3 Any costs arising from the fact that the other party fails to make available to Trademark the data and/goods referred to in paragraph 2 in a timely fashion will be at the expense of the other party. Trademark cannot be held liable for any form of damage incurred by the other party as a result of the delay referred to in paragraph 2.
- 5.4 In the event of force majeure as referred to in article 13 of these terms and conditions, the agreed delivery time will be extended with the duration of the force majeure situation.
- 5.5 The delivery of goods will be ex warehouse of Trademark.
- 5.6 The other party is obliged to take possession of the goods the moment Trademark delivers them or has them delivered to the other party, and/or the moment on which these goods are made available to the other party in accordance with the agreement. This is not affected by Trademark exceeding the delivery time.
- 5.7 If the other party refuses or neglects to provide information or instructions that are needed for delivery, Trademark will be entitled to store the goods at the expense and risk of the other party. If after fourteen days of Trademark having delivered the other party the other party is still not willing to take delivery, Trademark, at its discretion, will be entitled to destroy or sell the goods to be delivered. This does not affect the fact that the goods are deemed to have been delivered from the moment they are offered by Trademark, as a result of which the agreed purchase sum for these goods becomes payable by the other party.
- 5.8 Trademark is entitled to deliver the goods in parts and to invoice these part deliveries separately.

Article 6 – Assembly

- 6.1 In the event of service work, the other party ensures that staff of Trademark can commence at the agreed time and continue their work without disruptions. The other party ensures that:
 - a) the cooling container(s)/generator set(s) to be worked on are ready and waiting within appropriate grounds in time, with 380V connections ready for use at the expense of the other party, or:
 - b) the cooling container(s)/generator set(s) to be worked on are in the workshop of Trademark in time.
- 6.2 The work will be deemed completed once the container(s) or generator set(s) have been signed by the other party.

Article 7 – Passing on of costs

- 7.1 Changes in wages, cost price for raw materials or equipment, testing and/or certification costs and/or changes in exchange rates in relation to the agreed performance and which occur between the moment of Trademark issuing or submitting a quotation or offer and the moment that the performance is delivered, entitle Trademark to pass these on to the other party. The other party will be obliged to pay these rises in the price charged, unless it can demonstrate that these are incorrect and/or that it did not reasonably need to take such price increases into account.
- 7.2 In the event of price increases as referred to in paragraph 1, Trademark will notify the other party thereof, where possible. However, the absence of such notification does not release the other party from its obligation to pay the price increases.

Article 8 – Payment

- 8.1 Payment must be made direct or within fourteen days of the invoice date if mentioned on the invoice, in a method to be stipulated by Trademark and in the currency of the invoice, unless the agreement explicitly states a different payment term or a different method of payment.
- 8.2 Additional work and costs are invoiced as soon as they are known.
- 8.3 The other party is not allowed to deduct any amount from the invoice amount to be paid or to set off any amount against it.

- 8.4 Objections to the amount of the invoice must be raised by the other party and submitted to Trademark in writing, within the payment term referred to in paragraph 1. After this term has expired without an objection having been raised, any rights the other party may have in this respect lapse. Objections raised in time do not entitle the other party to suspend its obligation to pay, for whatever reason.
- 8.5 In the event of liquidation or a moratorium of the other party or the other party being placed under guardianship or his company being discontinued or dissolved, any claims of Trademark become immediately due and payable.
- 8.6 If the other party fails to pay within the agreed payment term referred to in paragraph 1 or as explicitly agreed, the other party will be in default by operation of law and owe default interest of 1% per month, whereby any part of the month will be deemed a full month until full settlement of the entire invoice amount.
- 8.7 All costs, including legal procedures and extrajudicial collection, incurred by Trademark within the framework of the agreement or which are recovered from Trademark, will be at the expense of the other party. The extrajudicial costs will be at least 10% of the amount to be collected, unless the actual extrajudicial costs are higher, in which case the actual extrajudicial costs will be at the expense of the other party in full.
- 8.8 Any payment made by or on behalf of the other party will successively serve to pay the (extra)judicial costs, the legal costs, the interest it owes, and subsequently, in order of age, the outstanding principal sums, regardless of any instructions from the other party to the contrary. Trademark can refuse full settlement of the principal sum, if this does not include any accrued interest and collection costs due.
- 8.9 As long as the other party has not fully fulfilled its payment obligations, as well as all other obligations under the agreement, Trademark will be entitled to suspend its obligations by virtue of the provisions in articles 11 and 12 of these general terms and conditions, as well as under any other agreement with the other party, until full payment of the principal sum and any accrued interests and costs due.

Article 9 - Retention of title

- 9.1 Trademark retains ownership of the goods delivered or to be delivered by Trademark, until the other party has fully fulfilled its obligations under the agreement with Trademark, including any claims from Trademark by virtue of any form of compensation due to breach of any contract by the other party.
- 9.2 The other party is not permitted to invoke a right of retention in respect of the storage costs with regard to the goods delivered subject to retention of title and/or to set these costs off against the performances to be delivered by the other party.
- 9.3 The other party is not permitted to pledge the goods that are subject to retention of title of Trademark, or to otherwise encumber these.
- 9.4 The sale of these goods is solely permitted within the framework of normal business operations.
- 9.5 In the event of third parties attaching goods that are subject to retention of title of Trademark, the other party must immediately notify Trademark thereof. The other party is obliged to immediately notify the attaching party of the retention of title of Trademark.
- 9.6 The other party undertakes to insure the goods subject to retention of title of Trademark and to keep them insured against damage caused by fire, explosion and flooding as well as theft. The other party also undertakes to submit the insurance policy to Trademark for inspection, on Trademark's demand.
- 9.7 The other party undertakes to sufficiently mark and identify the goods subject to retention of title of Trademark when stored and to keep proper records of any movements in stock.
- 9.8 If the other party fails to fulfil its obligations as referred to paragraph 1, Trademark will be entitled to have the goods subject to retention of title of Trademark retrieved from the place where they are stored (or arrange such operation), at the expense of the other party. The other party hereby grants Trademark and/or third parties to be engaged by Trademark, unconditional and irrevocable approval to access any location where the relevant goods are stored and to repossess these goods.

Article 10 – Security

- 10.1 The other party is obliged to provide proper security, in the format as indicated by and on Trademark's demand and to use this for the fulfilment of all its obligations, if so required. As long as the other party has failed to do so, Trademark will be entitled to suspend the fulfilment of its obligations.
- 10.2 If the other party fails to accede to a request as referred to in paragraph 1 within fourteen days, all its obligations become immediately due and payable and Trademark will be entitled to demand the fulfilment thereof.

- 10.3 In the event of force majeure as referred to in article 13 of these terms and conditions, the other party will be obliged to extend the payment securities provided by the other party with the duration of the force majeure situation.

Article 11 – Warranty

- 11.1 Trademark guarantees that the goods to be delivered and/or the services to be performed meet the usual requirements and standards that can be attached to them.
- 11.2 If the warranty provided by Trademark applies to items manufactured by a third party, the warranty will be limited to that provided by the manufacturer of the goods.
- 11.3 The warranty entails that Trademark, within the margins of this article and with due observance of article 12, at its discretion, will carry out repairs or replace the goods, free of charge, provided Trademark has been notified of the defects by the other party immediately after discovery thereof.
- 11.4 The work to be carried out under the warranty will be done during normal working hours. All additional costs, such as travel and subsistence expenses incurred by the engineer(s) deployed by Trademark and transport costs are at the expense of the other party.
- 11.5 The other party is obliged to keep the damaged goods available for inspection by Trademark. If the goods need to be replaced, the other party hereby undertakes to return the replaced goods to Trademark and to transfer ownership thereof to Trademark, free of charge.
- 11.6 Defects caused by improper use, insufficient maintenance, negligence, an accident or normal wear and tear are explicitly excluded from this warranty.
- 11.7 Parts replaced or repaired under warranty are warranted up to the end of the original warranty period.
- 11.8 With regard to overhaul and repair instructions, the scope of Trademark's warranty is limited to the soundness of the performance of the work agreed.
- 11.9 All rights of the other party by virtue of this article lapse, if repairs to goods have been carried out by the other party or third parties without the prior, written approval of Trademark, if damage has been caused due to improper use of the goods or if the maintenance schemes have not been observed correctly.

Article 12 - Liability

- 12.1 If the goods delivered and/or the services performed by Trademark fall short of what can be expected by the other party under the agreement, the liability of Trademark will be limited to the provisions of article 11 "Warranty".
- 12.2 Trademark can be held liable only for any direct damage incurred by the other party. Direct damage is exclusively taken to mean:
- a) reasonable costs, incurred in order to determine the cause and the extent of the damage or loss, in so far as the determination relates to damage or loss within the meaning of these general terms and conditions;
 - b) any costs reasonably incurred in order to ensure that the poor performance of Trademark complies with the agreement, unless this fault cannot be attributed to Trademark;
 - c) reasonable costs, incurred in order to prevent or limit the damage, insofar as the other party demonstrates that these costs have led to a reduction of the direct damage as referred to in these general terms and conditions.
- 12.3 The liability referred to in paragraph 2 will be limited to the amount equal to the invoice value, subject to a maximum of EUR 10,000. This reimbursement serves as sole compensation and excludes any other claim for compensation, unless the other party demonstrates that the damage can be attributed to gross negligence on the part of Trademark and/or its subordinates.
- 12.4 Trademark cannot be held liable for indirect damage, including consequential damage, lost profits, missed savings and losses due to business interruption.
- 12.5 Trademark cannot be held for the loss of cooling agent.
- 12.6 Trademark cannot be held liable for infringements of third-party patents or licences due to the use of data made available by or on behalf of the other party for the execution of the instruction.
- 12.7 The other party indemnifies Trademark against third-party claims in respect of incidents, acts or omissions for which Trademark cannot be held liable by virtue of the above. The other party is obliged to indemnify Trademark against all costs, damage and interests that may arise for Trademark as a direct or indirect results of an action brought against Trademark as referred to in this paragraph, upon first request.

Article 13 – Force majeure

- 13.1 Trademark cannot be held liable for the loss or damage due to circumstances Trademark cannot be blamed for and is not accountable for this either pursuant to the law, a legal act or any generally accepted practices. In these general terms and conditions, force majeure, in addition to the explanations in existing (case) law, is understood to mean all external causes, whether or not anticipated, beyond the control of Trademark. Such causes are deemed to include, yet are not limited to: strikes and lockouts, fire, war or the threat of war, storm or flooding, epidemics, riots, uprisings, civil war, transport or disturbances in manufacturing or the liquidation of its subcontractors.
- 13.2 Trademark is also entitled to invoke force majeure if the force majeure situation described in paragraph 1 occurs after the agreed term of delivery has expired.

Article 14 – Termination

- 14.1 If either party is in a situation as referred to in article 13 of these terms and conditions and invokes it, each party will be entitled to terminate the agreement, wholly or in part and without judicial intervention, after six months of this circumstance occurring, provided this circumstance continues at that time without a foreseeable end to it. In the event of termination of the agreement in accordance with this provision, Trademark will be entitled to charge the other party for any costs already incurred within the framework of the performance. Trademark at all times reserves the right to claim compensation.
- 14.2 In the event that the other party fails to fulfil any of its obligations under the agreement or fails to do so properly and in good time, without a circumstance in place as referred to in article 13, as well as in the event of liquidation, moratorium or guardianship, or the discontinuation or winding-up of its business, Trademark will be entitled, at its discretion, to terminate the agreement wholly or in part or to suspend (further) execution of the agreement, without being obliged to pay any compensation and without prejudice to any of its other rights. In those cases, Trademark will also have the right to demand immediate payment of all monies it is due.

Article 15 – Applicable law

- 15.1 All legal relationships between Trademark and the other party are governed by the laws of the Netherlands.
- 15.2 Disputes between Trademark and the other party within the jurisdiction of a court of law will be heard exclusively by the Rotterdam District Court, except if Trademark, as the claimant or applicant, chooses the competent court of the other party's place of residence or place of business.
- 15.3 In departure of the above, Trademark may opt to have the dispute subjected to the decision of arbitral tribunal. This arbitral tribunal will be appointed in accordance with the Regulations of the Court of Arbitration for the Metal Industry and Trade in the Hague and passes judgement with due observance of the guidelines of this Court.