

Terms and Conditions BMTEC B.V. January 2023

Definitions

Where these conditions refer to the seller, this means the private limited company “BMTEC B.V.”, with its registered office at Henry Hudsonstraat 22 (7825AG) in Emmen. Seller also includes the persons employed by or otherwise working on behalf of the seller.

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, delivers, or performs a service.

Article 1: General

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

The applicability of any purchase or other conditions of the buyer is expressly rejected.

Agreements that conflict with or supplement these conditions are only valid if and insofar as they have been confirmed in writing by the seller and only for the specific transaction.

If the seller does not always require strict compliance with these conditions, this does not mean that the provisions thereof do not apply or that the seller would lose the right to demand strict compliance with the provisions of these conditions in other cases. The seller is at all times entitled to amend or revise its general terms and conditions.

Article 2: Quotations and Offers

All quotations and offers from the seller via the website <https://cutwise.bmtec.nl/>, by email or any other medium are without obligation and do not bind the seller. No rights can be derived in any way from written or electronic quotations or offers. A quotation or offer from the seller to the buyer only binds the seller if it is made in writing or electronically and if the buyer accepts it in writing before the acceptance period mentioned therein expires.

The seller cannot be held to its quotations or offers if the buyer can reasonably understand that the quotations or offers, or 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, any costs to be incurred in the context of the agreement, including travel and accommodation, shipping, and administration costs, unless otherwise indicated.

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

A composite price quote does not oblige the User to perform part of the assignment for a corresponding part of the stated price. 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 if the seller proceeds to execute the order without further notice to the buyer.

Article 3: Execution and Amendment of the Agreement

The seller will execute the agreement to the best of its knowledge and ability and in accordance with the requirements of good craftsmanship. All this based on the current state of science at that time.

The seller has the right to have certain work performed by third parties. The applicability of article 7:404, 7:407 paragraph 2, and 7:409 BW is expressly excluded.

The buyer ensures that all data, which the seller indicates are necessary or which the buyer should reasonably understand to be necessary for the execution of the agreement, are provided to the seller in a timely manner.

If the data required for the execution of the agreement have not been provided to the seller in time, the seller has the right to suspend the execution of the agreement and/or charge the buyer for the extra costs resulting from the delay according to the usual rates at that time. The execution period does not commence until after the buyer has provided the data to the seller.

The seller is not liable for damage of any kind, if the seller has assumed incorrect and/or incomplete data provided by the buyer.

If during the execution of the agreement it becomes apparent that it is necessary to modify or supplement it for proper execution, the parties will adjust the agreement in a timely manner and in mutual consultation.

If the nature, scope, or content of the agreement, whether or not at the request or indication of the buyer, the competent authorities, etc., is changed and the agreement is thereby altered in qualitative and/or quantitative terms, this may have consequences for what was originally agreed. This may also increase or decrease the originally agreed amount. The seller will provide as much advance notice as possible. By modifying the agreement, the originally stated execution period may also be altered. The buyer accepts the possibility of modifying the agreement, including the change in price and execution period.

Without being in default, the seller may refuse a request to modify the agreement if this could affect the quality and/or quantity of the work to be performed or goods to be delivered.

Article 4: Price Increase; Suspension and Prepayment

If, after the date of conclusion of the agreement, one or more cost price factors undergo an increase - even if this occurs due to foreseeable circumstances - the seller is entitled to increase the agreed price accordingly and charge it in full to the buyer.

For her own reasons, the seller has the right not to accept orders or only to accept them if, in her reasonable opinion, the buyer's financial situation warrants it, to demand prepayment or security, and in the meantime to suspend the entire or partial execution of the agreement. If this prepayment is not made or the security is not provided to the reasonable satisfaction of the seller, the seller is entitled to dissolve the agreement without a written statement and without judicial intervention, insofar as the law allows.

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

Article 5: Delivery and Delivery Time

Delivery is ex-works/warehouse of the seller unless otherwise agreed.

Delivery is deemed to have taken place at the time the goods have left the factory or warehouse of the seller or at the time the seller has notified the buyer that the goods are ready for dispatch. Whichever occurs earlier.

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

If the buyer refuses to take delivery or is negligent in providing information or instructions necessary for the delivery, the seller is entitled to store the goods at the expense and risk of the buyer.

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

The seller is entitled to charge additional labor hours if the delivery is delayed due to circumstances not attributable to him.

If a period has been agreed or specified for the delivery of certain goods, this is never a fatal term. 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. In the event of exceeding a term, the buyer must give the seller written notice of default. The buyer must offer a reasonable period for the seller to still fulfill the agreement.

Article 6: Special Provision Delivery Time CutWise

Via the online application of the seller named Cutwise (<https://cutwise.bmtec.nl/>), the buyer can request a quotation from the seller. In the quotation request, the buyer can specify a desired delivery time. When the buyer subsequently agrees to the issued quotation, the seller sends an order confirmation. The order confirmation specifies a confirmed delivery time.

If the seller does not meet the confirmed delivery time stated in the order confirmation - which order has been received via the online application CutWise - the respective parts/products will be free of charge. The above applies only to orders that do not exceed a value of € 25,000.00 excluding VAT. The buyer is not released from his payment obligation if the seller cannot meet the delivery period due to unforeseen circumstances.

Unforeseen circumstances will include but are not limited to:

- Natural disasters;
- Shortages of energy and raw materials;
- Strikes;
- Epidemics and/or pandemics;
- Transport bottlenecks or obstacles outside the seller's control, particularly delays in delivery outside the seller's control, such as accidents, theft of goods, or unintentional loss or damage to them;
- General lockout times and/or contact bans;
- Operational obstacles outside the seller's control, such as fire, machine damage, or theft of goods;
- All other obstacles objectively not caused by the seller.

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

Article 7: Dissolution and Interim Termination

The seller is authorized to dissolve the agreement if circumstances arise that are of such a nature that compliance with the agreement is impossible or if other circumstances arise that are of such a nature that unaltered maintenance of the agreement cannot reasonably be required of the User.

If the agreement is dissolved, the seller's claims against the buyer are immediately due and payable. If the seller suspends compliance with the obligations, he retains his claims under the law and agreement.

If the seller proceeds to suspension or dissolution, he is in no way obliged to compensate for damage and costs arising in any way.

If the dissolution is attributable to the buyer, the seller is entitled to compensation for the damage, including costs, directly and indirectly caused.

If the buyer fails to fulfill his obligations under the agreement and this non-fulfillment justifies dissolution, the seller is entitled to dissolve the agreement immediately and with direct effect without any obligation on his part to pay any compensation or indemnification, while the buyer, due to default, is obliged to compensate or indemnify.

If the agreement is terminated prematurely by the seller, the seller will, in consultation with the buyer, ensure the transfer of work yet to be performed to third parties. This unless the termination is attributable to the buyer. If the transfer of work incurs extra costs for the seller,

these will be charged to the buyer. The buyer is obliged to pay these costs within the specified period unless the seller indicates otherwise.

In the event of liquidation, (application for) suspension of payments or bankruptcy, seizure - if and insofar as the seizure is not lifted within three months - at the expense of the buyer, debt rescheduling, or any other circumstance that prevents the buyer from freely disposing of his assets, the seller is free to terminate the agreement immediately and with immediate effect or to cancel the order or agreement, without any obligation on his part to pay any compensation or indemnification. In that case, the seller's claims against the buyer are immediately due and payable. If the buyer cancels a placed order in whole or in part, the work performed and the ordered or prepared goods, plus any supply and delivery costs thereof and the labor time reserved for the execution of the agreement, will be charged in full to the buyer.

Article 8: Force Majeure

The seller is not obliged to fulfill any obligation towards the buyer if he is hindered due to a circumstance not attributable to fault, and neither under the law, legal act, or generally accepted practice is accountable to him.

Force majeure will include but is not limited to:

- Business disruption or business interruption of any kind and however caused;
- Delayed or late delivery by the seller's suppliers or one of them or by third parties;
- Transportation difficulties and transportation obstacles of any kind, making transportation to the seller's business or from the seller's business to the buyer more difficult or impossible;
- Import or export restrictions of any kind.

The seller also has the right to invoke force majeure if the circumstance that prevents (further) compliance with the agreement occurs after the seller should have fulfilled his obligation.

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

Insofar as the seller, at the time of the occurrence of force majeure, has meanwhile partially fulfilled or will be able to fulfill its obligations under the agreement, and the fulfilled or to be fulfilled part has independent value, the seller is entitled to invoice the already fulfilled or to be fulfilled part separately. The buyer is obliged to pay this invoice as if it were 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 it is invoiced unless otherwise indicated in writing by the seller. The seller is entitled to invoice periodically.

The purchase price is immediately due and payable at the time the buyer dies, is declared bankrupt, applies for suspension of payments, joins the statutory debt restructuring, is placed under guardianship, discontinues or liquidates the business, or makes significant changes to it, his assets are placed under administration, or if a seizure is imposed on him.

If the buyer fails to make timely payment of an invoice, the buyer is legally in default. 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 due and 8% per year for commercial transactions, unless the statutory commercial interest is higher, in which case the statutory commercial interest is due. The interest on the due amount will be calculated from the moment the buyer is in default until the moment of full payment of the amount due.

The seller has the right to have the payments made by the buyer applied first to reduce the costs, then to reduce the accrued interest, and finally to reduce the principal sum and the current interest. The seller can refuse an offer of payment without being in default if the buyer indicates a different order for the allocation of the payment.

The buyer is never entitled to offset the amount owed to the seller. Objections to the amount of an invoice do not suspend the payment obligation.

The buyer, to whom no appeal can be made to section 6.5.3 (articles 231 to 247 book 6 BW), is also not entitled to suspend payment of an invoice for any reason.

If the buyer is in default or fails to meet his obligations, all reasonable costs to obtain satisfaction out of court are at the expense of the buyer. The extrajudicial costs are calculated based on what is customary in Dutch collection practice, currently the calculation method according to the scale included in the Decision on compensation for extrajudicial collection costs. If the seller has incurred higher collection costs that were reasonably necessary, the actual costs incurred will be eligible for compensation. The judicial and execution costs incurred will also be recovered from the buyer.

Article 10: Retention of Title

The goods delivered by the seller under the agreement remain the property of the seller until the following has been fully paid:

- The buyer has paid the delivered goods and all other outstanding amounts;
- The buyer has paid for work performed and/or additional services rendered by the seller under the agreement;
- The buyer has fulfilled any obligations to compensate for damages resulting from non-compliance by the buyer with an agreement requiring the delivery of goods.

The goods delivered by the seller subject to the retention of title may not be resold and may never be used as payment. The buyer is not authorized to pledge or encumber the goods subject to the retention of title in any other way. The buyer must do everything that can reasonably be expected of him to secure the seller's property rights. If third parties seize the goods delivered under retention of title or wish to establish or assert rights thereon, the buyer is obliged to immediately inform the seller.

If the buyer fails to fulfill his obligations or if there is a reasonable fear that he will not do so, the seller is entitled to take back the delivered goods subject to the retention of title from the buyer or third parties holding the goods for the buyer. The buyer is obliged to provide all cooperation under penalty of a fine of 10% of the amount owed 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 her property rights regarding the goods.

Article 11: Warranties, Examination, and Complaints, Limitation Period

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

The buyer will inspect the product within 14 days of delivery at the latest. If this period has passed without written and specified notification of valid complaints, the product is considered accepted.

The buyer must immediately check the delivered goods upon delivery for any deviations from the agreed upon. Any complaints must be submitted in writing to the seller within 14 working days after 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 for the disputed goods.

Quality requirements or quality standards of goods to be delivered by the seller must be explicitly agreed upon. Minor deviations, customary in the industry or technically unavoidable differences in quality, color, or finish, do not constitute grounds for filing a complaint.

The right to complain lapses if the goods have been processed or if the original condition of the delivered goods has been altered in any way. The burden of proof that the delivered goods do not comply with the agreement lies with the buyer. The buyer is also not entitled to warranty if the defect is caused by or is a result of circumstances beyond the seller's control, including weather conditions (such as, but not limited to, extreme rainfall or temperatures).

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

The seller's warranty obligation does not extend further than the explicitly made quality provisions or explicitly agreed quality standards. The seller's warranty does not apply if:

a) The buyer is in default towards the seller; b) The products have been exposed to abnormal conditions or have been treated carelessly or unprofessionally; c) The seller is not given the opportunity to investigate the complaint within 5 working days after discovery; d) More than one year has passed since the delivery; e) Normal wear and tear.

The notification must contain as detailed a description of the defect as possible, enabling the seller to respond adequately. The buyer must give the seller the opportunity to investigate the complaint.

If the buyer complains in time, this does not suspend his payment obligation. In that case, the buyer is also obliged to take delivery and pay for the otherwise ordered goods and what he has commissioned the seller to do.

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

If it is determined that a product is defective and a complaint has been filed in time, the seller will, within a reasonable period after return receipt thereof or, if return is reasonably not possible, written notification regarding the defect by the buyer, at the seller's discretion, replace or arrange for repair thereof or provide a replacement compensation to the Client. In case of replacement, the buyer is obliged to return the replaced product to the seller and transfer ownership thereof to the buyer unless the seller indicates otherwise.

If it is determined that a complaint is unfounded, the costs incurred thereby, including the investigation costs, on the part of the seller, will be fully charged to the buyer.

After the warranty period, all costs for repair or replacement, including administration, shipping, and travel costs, will be charged to the buyer.

Article 12: Liability

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

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

The seller is also not liable for:

- Violation of patents, licenses, or other rights of third parties resulting from the use of data provided by or on behalf of the buyer;
- Damage or loss, for whatever reason, of raw materials, semi-finished products, models, tools, and other items provided by the buyer.

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

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

The buyer is obliged to indemnify the seller and hold him harmless with regard to all claims of third parties for compensation of damage, for which the liability of the seller in these conditions in relation to the buyer is excluded.

Article 13: Indemnification

The buyer indemnifies the seller against any claims from third parties, which suffer damage in connection with the execution of the agreement and the cause of which is attributable to others than the seller. If the seller is held liable by third parties on this basis, the buyer is obliged to assist the seller both outside and in court and to immediately do everything that may be expected of him in that case. Should the buyer fail to take adequate measures, the seller is entitled, without notice of default, to do so himself. All costs and damage on the part of the seller and third parties thereby incurred are entirely at the expense and risk of the buyer.

Article 14: Intellectual Property

The seller reserves the rights and powers vested in him under the Copyright Act and other intellectual property laws and regulations. The seller has the right to use the knowledge gained through the execution of an agreement for other purposes, provided that no strictly confidential information of the buyer is disclosed to third parties.

Article 15: Jurisdiction and Applicable Law

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

The court in the seller's place of business has exclusive jurisdiction to hear disputes unless the law prescribes otherwise. This provision is solely for the benefit of the seller. The seller also reserves the right to bring legal action against the buyer according to the law of the country and before the competent court where the buyer is domiciled or has his registered office.

Parties will only appeal to the court after they have made every effort to resolve a dispute in mutual consultation.