

## **GENERAL TERMS OF SUPPLY AND PAYMENT NEPTUNUS BVBA**

### **1. GENERAL**

- 1.1 These General Terms of Supply and Payment shall apply to all orders entrusted to us, unless expressly agreed otherwise and so confirmed by Neptunus in writing.
- 1.2 The client acknowledges the applicability of these General Terms. Other terms – which may possibly be stated by clients to apply – shall be excluded, unless otherwise agreed in writing.
- 1.3 Where a departure in writing is made from any clause of these General Terms, the remaining clauses of the agreement shall continue to apply.

### **2. QUOTATIONS**

- 2.1 In the absence of any express agreement to the contrary, all offers are free of obligation. The prices stated in the quotation shall apply for 8 weeks.
- 2.2 In the absence of any agreement to the contrary in the order confirmation, all prices quoted by Neptunus are exclusive of VAT, packaging and carriage costs and/or of taxes, duties or charges otherwise imposed on the goods and/or services.
- 2.3 Unless otherwise agreed in writing, all charges and expenses for the requisite energy and water shall be borne by the client, as shall any fees and/or duties imposed by the public authorities.
- 2.4 The prices in the quotations shall apply solely to the quantities and/or materials stated therein.
- 2.5 Changes to stated prices are expressly reserved. Neptunus shall be entitled to pass substantial increases in wages, materials, transport and other charges and taxes on to the client, after the formation of the agreement but before complete delivery has taken place.

### **3. ORDERS**

- 3.1 An order shall be binding on the client. Neptunus shall only be bound once the order has been confirmed in writing. Where the client does not make any objection known to Neptunus within 8 days of the order confirmation, the order confirmation shall be deemed to reflect the agreement correctly and fully.
- 3.2 Items on which quotations are given will only be exclusively reserved for the client on receipt of the signed order confirmation, together with the first contractually agreed instalment of payment. Changes to the order, once it has been issued, must be brought to Neptunus' attention in writing in good time. Changes made by word of mouth shall only apply once confirmed in writing by Neptunus. Any changes that cause costs higher than those on which the quoted prices were based will be charged for in addition. Neptunus reserves the right to carry out extra work, whether or not specified in the order or order confirmation, and to charge same to the client, if such work is in the interests of the proper fulfilment of the order. Neptunus shall give the client prior notice of such extra work in writing unless the urgent nature thereof prevents this.

### **4. FULFILMENT OF THE ORDER**

- 4.1 All delivery times given by Neptunus are always approximate and non-binding, unless it expressly appears in the order confirmation that the agreed delivery time and date are an irrevocable deadline. The delivery time will commence as soon as the order confirmation is dispatched and the client has provided Neptunus with all the data, drawings and materials that the latter judges necessary. In no event shall an over-run on the delivery time relieve the client of his obligations under the agreement and neither shall it entitle the client to cancel the agreement and/or claim compensation.
- 4.2 The client must ensure that Neptunus has adequate opportunity to fulfil the order. The client must also ensure that third parties carrying out work on his instructions do not cause any delay to Neptunus' work. If, however, delay arises for the aforementioned reason, the cost thereof will be charged to the client.

- 4.3 If it appears, during fulfilment of an order accepted by Neptunus, that through force majeure or circumstances unknown to Neptunus, the work is incapable of performance, Neptunus shall be entitled to demand that the order be changed, such that performance of the work becomes possible. Neptunus shall be entitled, without consultation or notification, to outsource the order or part thereof or to have same fulfilled by a third party, if this is, in Neptunus' opinion, conducive to the proper and efficient fulfilment of the order.
- 4.4 If the client fails to punctually comply with any of its obligations pursuant to the agreement with Neptunus, Neptunus shall always have the right to suspend its performance of the agreement and to dissolve it without any judicial intervention and without any notice of default being required. If the client fails to comply with the agreement, it shall pay a lump-sum compensation for any damage or loss incurred, and any for lost profits, of 10 % of the amount of the agreement, without prejudice to the entitlement to full damages, with the burden of proof resting with Neptunus.
- In the event of force majeure (which shall be deemed to include: war, mobilisation, riot, extreme weather conditions, in particular strong winds, hold-up due to frost, traffic jam, conflagration, breakdown of machinery, strike, non-delivery of requisite materials and semi-finished goods to Neptunus by third parties and other unforeseen circumstances that disrupt the normal course of business and delay or render unreasonable performance of the order) Neptunus shall be relieved of its obligation to comply without the client thereby having any claim to compensation for expenses, loss or interest. Should force majeure arise, Neptunus shall immediately notify the client thereof, whereupon the client shall have the opportunity to cancel the order within five days of receipt of said notice, subject to an obligation to recompense Neptunus for the part of the order already fulfilled.

## **5. CLIENT'S OBLIGATIONS**

- 5.1 The client must ensure that, on the dates agreed, the location to which the goods are to be delivered is accessible from the public highway, completely free of obstructions and levelled such that Neptunus is able to begin erecting the equipment without further work. Should the site be inaccessible, for example because of weather conditions, the client must provide a replacement site.
- Anchorage must be possible on the site, using either ground anchors of up to 100 cm, or else concrete blocks or concrete floors. The client is to ensure that the grounds can be driven on properly by lorries, cranes, forklift trucks and other work equipment, if necessary by the client installing road plates. Neptunus will not be liable for damage to the site or to paving.
- 5.2 The client must familiarise himself with the licences, orders and exemptions needful for the agreement and shall attend to applications for same at his own expense. He must also make provision at his own expense for installing and keeping ready for use the prescribed fire alarm and evacuation systems and other fire prevention arrangements (extinguishers, emergency lighting and emergency exit signs). The client must inform the relevant official bodies of the intended construction of the equipment and -if so required- make arrangements for a building inspection, which must take place in the presence of a representative of Neptunus. Neptunus shall, if necessary, make structural calculations available. The client, being aware that such calculations incorporate patented information, is bound to secrecy and must ensure that the calculations are used exclusively for the purposes of the technical inspection.
- If excavation works and/or soil drilling have to be carried out in connection with anchorage, the client must inform Neptunus of the exact position of any underground services or cables (including but not limited to gas, water, electricity, heating and communications) and must submit drawings of the same to Neptunus in advance of the delivery. The client shall indemnify Neptunus against third-party claims against Neptunus in relation to damage caused to cables and pipes.
- 5.4 The client must provide a clear drawing showing where the equipment is to be positioned. He must be present at the commencement of the erection work and indicate the exact location. The client shall indemnify Neptunus against third-party claims against Neptunus in relation to the positioning of the equipment.
- 5.5 The client must ensure that, during fulfilment of the order, the site is properly enclosed and has security against theft and malicious damage.

- 5.6 The client must make space available in the proximity of said position for the storage of packaging material.
- 5.7 The client must provide the requisite connections for electricity, water supply and sewerage. The client must also provide (temporary) toilet facilities during performance of the work by Neptunus.
- 5.8 The client must inform Neptunus of the specific provisions on Health, Safety and the Environment applicable to the site.

## **6. COMPLAINTS AND WARRANTY**

Any defects shall be reported in writing within three days of their being discovered, taken from and no later than at the moment of delivery or completion. Any hidden defects, which are not found until after delivery or completion, shall be reported immediately when discovered. Subsequent complaints shall be deemed to have been submitted out of time and will no longer be accepted. Defects that justify partial cancellation shall not give any right to claim complete cancellation.

- 6.2 If Neptunus accepts that there is a defect in the goods delivered, it shall have the choice of either re-delivery at no expense or offering the client a price reduction, all such in consultation with the client. To establish a defect, the client shall assist Neptunus and arrange access when required to provide the opportunity to organise, or have organised by a third party, an on-site investigation of the quality of the goods and services supplied.
- 6.3 Neptunus accepts no liability whatsoever for defects caused by or suffered by the goods or services through the fault or actions of third parties or the client, or from external causes. Liability for any hidden defects shall be limited to one month after their being discovered.

## **7. LIABILITY**

- 7.1 Neptunus' liability shall be limited to no more than the amount of the goods and or services it supplies. In no event shall Neptunus be liable for direct or indirect damage that may arise from non-fulfilment of the order or the incorrect or untimely fulfilment thereof.
- 7.2 Complaints concerning particular work or goods supplied shall not suspend the client's obligation to pay. In no event may the client claim cancellation of this agreement as a result of complaints or defects.
- 7.3 Neptunus and persons under its control shall not be liable in any way whatsoever for any damage, however described and arising from whatever course, other than as a consequence of its own intent or gross negligence, as proven by the client.
- 7.4 The client shall indemnify Neptunus against and compensate it for all claims for compensation that third parties make against Neptunus for damage arising from or by the deliverables, however described.
- 7.5 All measures that impede, frustrate or hinder international trade, shall be for the account of the client.

## **8. HIRE**

- 8.1 The clauses hereinabove shall also apply in the event of goods being hired, insofar as there is no express provision to the contrary. In such an event the client shall for these purposes be the hirer and Neptunus the supplier.  
In any event Neptunus shall remain the owner of the goods made available to the hirer. If the client sells the goods delivered to a third party, the client's debt claim on their fellow contracting party will transfer to Neptunus by operation of law.
- 8.3 Hire period shall mean the period from the date on which the materials are delivered to the last date of removal of the equipment inclusive.
- 8.4 Period of use shall mean the period from the date on which Neptunus hands over the equipment to the hirer until the date on which dismantling of the equipment begins, inclusive.
- 8.5 The hirer shall use the hired goods for their intended purpose and declares that he receives them in good condition, will keep them in that condition and, hence, will return them on expiry of the period of use in the same condition as that in which he received them. The hirer may not carry off or cause to be carried off the hired property without the written consent of the supplier. The hirer must provide

access to the hired property at all times. Sub renting, making available for use by another and giving in use to a third party shall be possible only with Neptunus' written consent.

- 8.6 The hirer must inform Neptunus without delay if the hirer's goods or real property or the property that is the object of this agreement are seized, or if Neptunus' proprietary rights are otherwise endangered, and also in the event of the hirer being made judicially insolvent, applies for a suspension of payments, goes into receivership or relocates his business. The hirer shall be under the obligation to immediately inform the bailiff enforcing the attachment, the administrator, trustee or guardian about this agreement, and give them access to this agreement.
- 8.7 The hired equipment will be insured by Neptunus against the risks of fire, storm, damage by aircraft and lightning. Fixtures and goods that are not Neptunus' property and are on or in the equipment are not included in this cover and are at the hirer's risk and expense. During the hire period as specified in clause 8.3, the hirer shall bear the risk of vandalism, theft, embezzlement or loss.
- 8.8 The hirer shall be liable for all damage to the hired property, however it may be described or caused, notwithstanding whether it is the result or fault of the hirer, of a third party or of force majeure. The hirer must report any damage to or defect in the hired property to Neptunus immediately. The hirer may not make repairs without Neptunus' consent. If the defect in or damage to the hired property arose without any fault on the part of the hirer, the hirer shall – if possible– be entitled to replacement of the goods concerned for the remaining term of the agreement.
- 8.9 Neptunus shall not in any event be liable for any environmental damage (including soil contamination arising from fuel-powered hired goods such as heating, generator sets, etc.).
- 8.10 The hirer is not permitted to cover up or remove the brand names, (picture) marks and logos on the equipment or parts thereof without the consent of the supplier.
- 8.11 If, at the end of the period of use, the hirer does not make the equipment available to Neptunus promptly, the latter shall be entitled, for every day or part day for which the property is not delivered up to it, to charge the hirer the agreed daily rental by way of compensation, together with any expenses incurred. If, when returning the goods, they are found to have defects, be damaged or be incomplete, and/or the goods hired have not been cleaned or have been improperly cleaned, Neptunus shall have the right to charge the hirer for the associated costs. Any costs of cleaning for the purpose of removing hard-to-remove paint, tape or stickers applied to the hired goods by the hirer shall always be charged to the hirer.
- In the event of shortages, the counts by Neptunus' warehouse shall be conclusive.

## **9. RESERVATION OF TITLE**

- 9.1 In the event of sale, hire purchase or financial leasing, Neptunus shall retain title to the goods supplied until such time as the client has met all his obligations under the agreement, and has paid any compensation owed in relation to the supply in question.

## **10. INTELLECTUAL PROPERTY RIGHTS AND COPYRIGHT**

- 10.1 Neptunus shall retain the copyright to any designs, drawings, sketches and calculations designed or accomplished, as the case may be, even where done on the client's instructions
- 10.2 The client undertakes to use the designs, drawings, sketches and calculations only for his own purposes, and not to make them available in any manner whatsoever to any third party, for reward or otherwise.

## **11. PAYMENT**

- 11.1 All payments shall be made on the terms specified by the agreement, net and without any deduction.
- 11.2 If the fulfilment of an order extends over a period of more than a month or if, in Neptunus' opinion, the sum involved is such as to require it, Neptunus may demand payment in advance or in instalments.
- 11.3 The agreed payment terms notwithstanding, Neptunus shall be entitled to demand security for payment during fulfilment of the order.

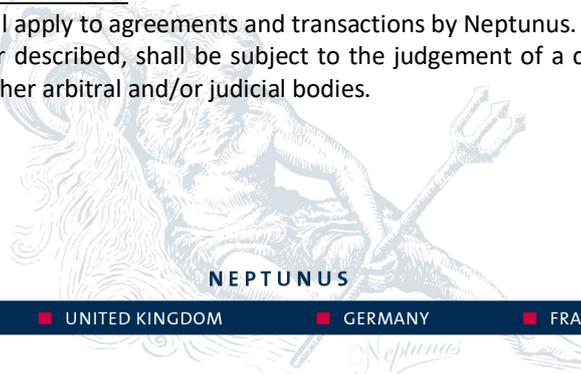
- 11.4 If the payment term is exceeded, the client shall owe default or conventional interest on the invoice amount of 10% p.a., taking effect from the date when the invoice amount becomes due and payable, plus a supplementary lump-sum payment of 10 % capped at €500.
- 11.5 All legal and extra-legal expenses that Neptunus may incur in asserting its rights shall be charged to the client. These expenses shall be deemed to amount to at least 10% of the sum due, subject to a minimum of € 100.00.
- If the client is in default of his obligation to pay, Neptunus reserves the right to suspend work, which means that Neptunus will recommence its operations only when the client has met his obligations, without prejudice to Neptunus' right to compensation should the client remain in default. If the cause of the work not being finished promptly is rooted in non-compliance with the terms of payment, Neptunus shall not be held liable in any way whatsoever for the late delivery.
- 11.7 If the client does not pay despite repeated reminders, Neptunus reserves the right to resort to cancellation of the agreement and to repossess whatever has already been done, whereupon the client shall be held liable for all loss arising from failure to comply or comply promptly with the agreements on payment.

## **12. NOTICE AND CANCELLATION OF THE AGREEMENT**

- 12.1 If the client does not duly meet one or more of his obligations to Neptunus under the agreement, Neptunus shall be entitled to cancel the agreement with immediate effect, either fully or in part, by means of a written declaration, all such without prejudice to the right to compensation. If the client fails to comply with the agreement, it shall pay a lump-sum compensation for any damage or loss incurred, and any for lost profits, of 10 % of the amount of the agreement, without prejudice to the entitlement to full damages, with the burden of proof resting with Neptunus.
- 12.2 Neptunus shall have the power to cancel the agreement with immediate effect if the client applies for a suspension of payments, is declared judicially insolvent or decides to shut down or transfer his business, wholly or in part.
- 12.3 In the event of dissolution of the agreement as described in 12.1 and 12.2, Neptunus shall be entitled to start dismantling and carrying off the equipment at once.
- 12.4 The client shall be entitled to cancel the agreement in writing before the delivery date by means of a registered letter. The client shall thereby become liable to a cancellation charge equal to a percentage of the price agreed in the order confirmation, which percentage shall be determined as follows:
- on cancellation more than 120 days before delivery: 20 %
  - on cancellation 120 – 61 days before delivery: 40 %
  - on cancellation 60 – 31 days before delivery: 60 %
  - on cancellation 30 days or less before delivery: 80 %
- In addition, the client is obliged to compensate Neptunus for the work already carried out by Neptunus and/or its subcontractors and for the investments made and/or investment obligations entered into by Neptunus.
- 12.5 The payments referred to in Article 12.4 also apply in the event of cancellation, postponement, interruption or premature termination of an event in connection with an epidemic, pandemic or contagious disease (both national and international) and/or in connection with measures to be taken/adopted (by the responsible authorities) to prevent the spread of the diseases referred to above. This applies irrespective of the degree of foreseeability of the outbreak of the diseases referred to above.

## **13. APPLICABLE LAW AND DISPUTES**

- 13.1 Only Belgian Law shall apply to agreements and transactions by Neptunus.
- 13.2 All disputes, however described, shall be subject to the judgement of a competent Belgian court, to the exclusion of all other arbitral and/or judicial bodies.



NEPTUNUS