

SPMA GENERAL TERMS AND CONDITIONS OF SUPPLY

General Terms and Conditions of Supply and Payment issued by the SPMA (Specialists Production Mechanization and Automation), a subsidiary of the METAALUNIE, having its registered business headquarters in Nieuwegein, filed at the Office of the District Court in Utrecht on 20/03/2003 under no. 03/71
Published by the SPMA, PO Box 2600, 3430 GA Nieuwegein

© Specialists Productions Mechanization and Automation (SPMA)

Article 1: Applicability

- 1.1. These terms and conditions shall apply to all offers made by members of the SPMA, to all contracts concluded by the said members and to all contracts which result therefrom. The provider/supplier shall be the member of the SPMA employing these terms and conditions, who shall be referred to as the contractor or seller. The other party shall be referred to as the principal or buyer.
- 1.2. These terms and conditions may only be used by members of the SPMA.
- 1.3. The principal's general terms and conditions shall not apply and are expressly dismissed.

Article 2: Offers

- 2.1. All offers shall be without prejudice and subject to contract.
- 2.2. Should the principal provide the contractor with data, diagrams etc., the contractor may assume the correctness thereof and shall base their offer thereon.
- 2.3. The prices specified in the offer shall be based on delivery ex works, as specified in Incoterms 2000. The prices shall not include sales tax and packaging.
- 2.4. Should their offer not be accepted, the contractor shall be entitled to charge all the expenses incurred in making their offer to the principal.

Article 3: Intellectual property rights

- 3.1. Unless agreed otherwise, the contractor shall retain the copyright and all industrial property rights to the offers they make and the designs, illustrations, diagrams, (pilot) models, software, etc. submitted.
- 3.2. The rights to the data specified in Paragraph 1 shall remain the property of the contractor regardless of whether the principal bears the costs for the manufacture thereof. This data may not be copied, used or shown to third parties without the express written permission of the contractor. In the event of breach of the terms of this provision, the principal shall owe the contractor a fine of 25,000 euros. This fine can be claimed together with damages under the law.
- 3.3. The principal must return the data with which provided, as specified in Paragraph 1, on demand and within the deadline laid down by the contractor. In the event of breach of this provision, the principal shall owe the contractor a fine of 1,000 euros per day. This fine can be claimed together with damages under the law.

Article 4: Recommendations, designs and materials

- 4.1. The principal shall not be entitled to invoke any rights to recommendations and information which they obtain from the contractor if the said recommendations and information are not directly related to the order.
- 4.2. The principal shall be responsible for diagrams and calculations made by him or on his behalf and for the functional suitability of materials prescribed by him or on his behalf.
- 4.3. The principal shall compensate the contractor for any claims from third parties regarding the use of diagrams, calculations, samples, models, etc. provided by or on behalf of the principal.
- 4.4. The principal may, at their own expense, inspect/have inspected the materials which the contractor intends to use before these materials are processed. Should this cause damages for the contractor, the said damages shall be borne by the principal.

Article 5: Delivery period

- 5.1. The approximate delivery period shall be set by the contractor.
- 5.2. When setting the delivery period, the contractor shall start from the premise that they can perform the order under the circumstances known to them at that moment.
- 5.3. The delivery period shall commence once agreement has been reached about all the technical details; once all the required data, definitive diagrams and so on are in the possession of the contractor and once the agreed (instalment) payment has been received and the required terms and conditions for the performance of the order have been complied with.
- 5.4.
 - a. In the event of circumstances arising which differ from those known to the contractor when setting the delivery period, the contractor may extend the delivery period by the time required to perform the order under the revised circumstances. If the work cannot be fitted into the contractor's plans, the work shall be finished off as soon as their plans so allow.
 - b. In the event of additional work, the delivery period shall be extended by the time required to (have) deliver(ed) the materials and components for the additional work and to perform the additional work. If the work cannot be fitted into the contractor's plans, the work shall be finished off as soon as their plans so allow.
 - c. In the event of suspension of obligations by the contractor, the delivery period shall be extended by the duration of the suspension. If continuation of the work cannot be fitted into the contractor's plans, the work shall be finished off as soon as the plans so allow.
 - d. In the event of weather preventing the performance of work, the delivery period shall be extended by the duration of the period of standstill arising.
- 5.5. Under no circumstances shall exceeding the agreed delivery period entail a claim to damages, unless this is agreed in writing.

Article 6: Transfer of risk

- 6.1. In the event of purchase, delivery shall be performed "ex works", as specified in Incoterms 2000; the risk for the goods shall pass over from the moment that the seller makes the goods available to the buyer.

- 6.2. Notwithstanding the provisions of Paragraph 1, the principal and contractor can agree that the contractor is responsible for the transportation. The risk of storage, loading, transportation and unloading shall also rest with the principal in this case. The principal may take out insurance coverage against these risks.

- 6.3. Also in the event that the seller installs and/or assembles the goods purchased, the risk for the goods shall pass over from the moment that the buyer makes the goods available to the seller in the seller's business premises or at an agreed point.

- 6.4. In the event of a purchase involving trade-in when the buyer continues to use the goods to be traded-in whilst awaiting delivery of the new goods, the risk for the goods to be traded-in shall remain with the buyer until the moment that they place the said goods in the possession of the seller.

Article 7: Price amendment

- 7.1. If four months have expired since the date on which the contract was concluded and the contractor has not yet completed performance thereof, an increase in the price-determining factors can be passed on to the principal.
- 7.2. Payment of the price increase as specified in Paragraph 1 shall be made at the same time as payment of the main sum or the final instalment.
- 7.3. If goods are supplied by the principal and the contractor is ready to use the said goods, the contractor may charge a maximum of 20% of the market price of the goods delivered.

Article 8: Impracticality of the order

- 8.1. The contractor shall be entitled to suspend the fulfilment of their obligations if they are temporarily prevented by circumstances beyond their control and which could not have been predicted at the time of conclusion of the contract from fulfilling their obligations.
- 8.2. Circumstances which could not have been predicted by the contractor and which are beyond their control shall be taken to include situations in which suppliers and/or subcontractors of the contractor do not fulfil their obligations or do not fulfil their obligations on time, adverse weather, earthquakes, fire, loss or theft of tools and equipment, loss of the material for processing, roadblocks, strikes or work stoppages and import or trade restrictions.
- 8.3. The contractor shall not be authorised to suspend the fulfilment of their obligations if the compliance is permanently impossible or if temporary impossibility has lasted for over six months. The contract can then be dissolved for the portion of the obligations that have not yet been complied with. The contracting parties shall in that case have no right to compensation for damages suffered or to be suffered as a result of the dissolution.

Article 9: Scope of the work

- 9.1. The principal must ensure that all authorisations, dispensations and other rulings required for the performance of the work are obtained in good time.
- 9.2. The price of the work shall not include:
 - a. the costs for earthworks, pile-driving, pick-work, rubble-breaking, foundation-laying, bricklaying, carpentry, plastering, painting, wallpapering, repairs or other construction work;
 - b. the costs for connection of gas, water, electricity or other infrastructure facilities;
 - c. the costs for prevention or limitation of damages to goods present at or near the work;
 - d. the costs for removal of materials, building materials or rubbish;
 - e. travel and accommodation expenses.

Article 10: Amendments to the work

- 10.1. All cases of amendments to the work shall result in additional work or reduced work if:
 - a. there is an amendment to the design or specifications;
 - b. the information provided by the principal does not correspond to the real state of affairs;
 - c. there is more than 10% deviation from the estimated quantities.
- 10.2. Additional work shall be calculated on the basis of the value of the price-determining factors which apply at the moment that the additional work is performed. Reductions in work shall be offset on the basis of the value of the price-determining factors which applied at the time of conclusion of the contract.
- 10.3. If the balance of the reductions in work exceeds that of the additional work, the contractor shall be entitled to charge 10% of the difference in the balances to the principal in the final statement. This provision shall not apply for reductions in work resulting from a request issued by the contractor.

Article 11: Performance of the work

- 11.1. The principal shall ensure that the contractor can perform their work undisturbed and at the agreed time and that they are provided with the required facilities for the performance of their work, for instance:
 - gas, water and electricity;
 - heating;
 - closable dry storage space;
 - the facilities prescribed under the Working Conditions Act and workplace legislation.
- 11.2. The principal shall be obliged to ensure that upon commencement of the performance of the work all the required safety precautions and other precautionary measures have been taken and are maintained during the course of the work, so as to ensure the health and safety of working conditions for the contractor's employees.
- 11.3. If one (or more) situation(s) specified in Article 11.2 arise, the principal shall compensate the contractor for the ensuing costs arising from possible penalties and/or directives issued by the Health and Safety Inspectorate.

- 11.4. The principal shall be liable for any damages resulting from loss, theft, fire damage or damage to tools and equipment, material and other items belonging to the contractor which are situated on the site where the work is performed.
- 11.5. If the principal does not comply with his obligations as detailed in the above paragraphs and this leads as a result to delay in the performance of the work, the work shall be performed as soon as the contractor's plans so permit. The principal shall furthermore be liable for all damages ensuing for the contractor.

Article 12: Completion of the work

- 12.1. The work shall be considered as completed if:
- a. the principal has approved the work, or;
 - b. the work is brought into use by the principal. If the principal brings a portion of the work into use then that portion shall be considered completed, or;
 - c. the contractor notifies the principal in writing that the work is finished and the principal does not make known in writing within 14 days of the said notification whether the work has been approved or not, or;
 - d. the principal does not approve the work pursuant to minor defects or missing components which can be repaired or delivered subsequently within 30 days and which do not prevent the work from being brought into operation.
- 12.2. If the principal does not approve the work then they shall be obliged to notify the contractor in writing, specifying reasons.
- 12.3. If the principal does not approve the work then they shall grant the contractor the opportunity to complete the work again. The provisions of this Article shall continue to apply.

Article 13: Liability

- 13.1. The contractor shall be liable for damages suffered by the principal and which are the direct and exclusive result of a failing attributable to the contractor. For compensation, however, only the damages for which the contractor is insured, or ought reasonably to have been insured for, shall qualify.
- 13.2. The following shall not qualify for compensation:
- a. trading losses including for example standstill losses and lost profit;
 - b. related damages. Related damages shall be taken to refer to damages caused by or during the performance of the accepted work to goods on which work was being performed or to goods located in the immediate vicinity of the place where the work was being performed;
 - c. damages caused intentionally or through deliberate recklessness by auxiliary personnel.
- 13.3. The principal shall compensate the contractor for all claims from third parties due to product liability as a result of a defect in a product supplied by the principal to a third party and which was (partly) made up of products and/or materials supplied by the contractor.

Article 14: Guarantee

- 14.1. The contractor shall be liable for a period of six months after completion/supply for the good performance of the agreed provision of goods and/or services.
- 14.2. If the agreed provision of goods and/or services includes acceptance of work, then the contractor shall be liable for the period specified in Paragraph 1 for the reliability of the structure delivered and the materials used, subject to the condition that they were free to decide thereon.
- If it turns out that the structure supplied or the materials used are not reliable, the contractor shall repair or replace them. The parts that are repaired at the contractor's business premises or are replaced by the contractor must be sent carriage paid to the contractor. Disassembly and assembly of these parts and any travel and accommodation expenses arising shall be borne by the principal.
- 14.3. If the agreed provision of goods and/or services includes processing materials supplied by the principal then the contractor shall be liable for the period specified in Paragraph 1 for the reliability of the processing performed.
- If it emerges that processing has not been performed reliably, the contractor shall decide between the following options:
- performing the processing again. In this case the principal must supply new material at their own expense;
 - repairing the defect. In this case the principal must send the material back carriage paid to the contractor;
 - crediting the principal for a proportional share of the invoice.
- 14.4. If the agreed provision of goods and/or services consists of supplying goods then the contractor shall be liable for the period specified in Paragraph 1 for the reliability of the goods supplied.
- If it emerges that the delivery was not reliable, then the goods must be sent back carriage paid to the contractor. The contractor shall then decide whether to:
- repair the goods;
 - replace the goods;
 - credit the principal for a proportional share of the invoice.
- 14.5. If the agreed provision of goods and/or services consists (partly) of the installation and/or assembly of goods delivered then the contractor shall be liable for the period specified in Paragraph 1 for the reliability of the installation and/or assembly.
- If it emerges that the installation and/or assembly has not been performed reliably, the contractor shall repair this. Any travel and accommodation expenses shall be borne by the principal.
- 14.6. A manufacturer's warranty shall apply for the components for which the principal and contractor have agreed specifically in writing. If the principal has had the opportunity to inspect the contents of the manufacturer's warranty, this shall take the place of a guarantee under the terms of this Article.
- 14.7. The principal must, under all circumstances, offer the contractor the opportunity to repair a possible defect or to re-perform processing thereof.
- 14.8. The principal may only invoke the guarantee once they have fulfilled all their obligations towards the contractor.
- 14.9. a. No guarantee shall be granted for defects caused by:
- normal wear and tear;
 - improper use;
 - neglect to perform maintenance or incorrectly performed maintenance;

- installation, assembly, modification or repair performed by the principal or by third parties.
- b. No guarantee shall be issued for goods supplied which were not new at the time of delivery.

Article 15: Claims

The principal shall lose the right to invoke a defect in the services rendered if they do not submit a written complaint to the contractor within 14 days of when they first discovered, or reasonably ought to have discovered, the defect.

Article 16: Goods not taken delivery of

If goods have not been taken delivery of after the expiry of the delivery deadline, these shall remain at the disposal of the principal. Goods not taken delivery of shall be stored at the expense and risk of the principal. The contractor may still make use of the entitlement under Article 6:90 of the Dutch Civil Code.

Article 17: Payment

- 17.1. Payment shall be made at the registered office of the contractor or to an account designated by the contractor.
- 17.2. Unless agreed otherwise, payment shall be made as follows:
- a. in cash for a counter sale;
 - b. if payment by instalments is agreed and in the absence of an SPMA draft agreement:
 - 40% of the total price upon order;
 - 50% of the total price after supply of the material;
 - 10% of the total price upon completion;
 - c. in all other cases within 30 days of the billing date.
 - d. for an SPMA draft agreement, in accordance with the stages and instalments as specified in the relevant contract.
- 17.3. Notwithstanding the agreed payment conditions, the principal shall be obliged at the request of the contractor to provide a security for payment which the contractor considers sufficient. If the principal does not comply with this provision within the set deadline, they shall fall immediately into default. In such cases the contractor shall be entitled to dissolve the contract and to recover their damages from the principal.
- 17.4. The principal shall not be entitled to offset their claims against the contractor, unless in the event of bankruptcy of the contractor.
- 17.5. Full claim to payment shall be immediately due and payable if:
- a. a payment instalment is exceeded;
 - b. the principal goes bankrupt or applies for a moratorium on payments;
 - c. an attachment order is placed on the principal's goods or claims;
 - d. the principal (company) is dissolved or wound up;
 - e. the principal (natural person) is placed under guardianship or dies.
- 17.6. If payment has not been made within the agreed payment deadline, the principal shall owe immediately claimable interest to the contractor. The interest shall be 10% per annum or equal to the statutory rate of interest if this is higher. When calculating the interest, a part of a month shall be considered a full month.
- 17.7. If payment has not been made within the agreed payment deadline, the principal shall owe the contractor all extra-judicial costs with a minimum of 50 euros.

The costs are calculated on the basis of the following table:

on the first 3,000 euros	15%
on the excess up to 6,000 euros	10%
on the excess up to 15,000 euros	8%
on the excess up to 60,000 euros	5%
on the excess from 60,000 euros	3%

If the extra-judicial costs actually incurred are higher than under the above calculation, the costs actually incurred shall be payable.

- 17.8. If the contractor brings a successful legal action, all the costs they incur in connection with this action shall be borne by the principal.

Article 18: Retention of title and right of pledge

- 18.1. After delivery the contractor shall remain owner of the goods supplied as long as the principal:
- a. fails or is set to fail to discharge their obligations under the terms of this contract or other similar contracts;
 - b. does not or is set to not pay for work performed or to be performed under the terms of such contracts;
 - c. fails to comply with claims arising from breach of the aforementioned contracts, such as damages, penalties, interest and costs.
- 18.2. As long as a retention of title exists on the goods supplied, the principal may not encumber these goods outside their normal business operations.
- 18.3. After the contractor has invoked retention of title, they may take back the goods supplied. The principal shall grant the contractor access to the place where these goods are located.
- 18.4. If the contractor cannot invoke their retention of title because the goods supplied have been mixed, deformed or copied, the principal shall be obliged to pledge the newly created goods to the contractor.
- Article 19: Dissolution**
- If the principal wishes to dissolve the contract despite the contractor not having breached the contract, and provided the contractor is in agreement with this, the contract shall be dissolved by mutual consent. The contractor shall be entitled in this case to compensation for all financial losses, such as losses suffered, lost profit and costs incurred.

Article 20: Applicable law and jurisdiction

- 20.1. Dutch law shall apply.
- 20.2. The Vienna Sales Convention (C.I.S.G.) shall not apply, nor any other international regulations from which exclusion is permitted.
- 20.3. The civil court shall hold sole jurisdiction in disputes for the contractor's place of business, unless this is in conflict with the express requirements of mandatory law. The contractor may deviate from this rule of jurisdiction and apply the statutory rules of jurisdiction.
- 20.4. The contracting parties may agree on a different form of dispute settlement such as arbitration or mediation.