

General Sales Terms & Conditions

versie 10/09/2022

Article 1: General

1. These terms and conditions apply to every offer, quotation and agreement between CyBe Construction B.V. hereinafter referred to as: "User", and a "Client" to which the User has declared these terms and conditions applicable, insofar as the parties have not deviated from these terms and conditions explicitly and in writing.
2. The present terms and conditions also apply to agreements with the User, for which the User must involve third parties.
3. These general terms and conditions have also been written for the employees of the User and his management.
4. The applicability of any purchase conditions or other terms and conditions of the Client is explicitly rejected.
5. If one or more provisions in these general terms and conditions are at any time wholly or partially void or voidable, the other provisions in these general terms and conditions will remain fully applicable. The User and the Client will then enter into consultation in order to agree on new provisions to replace the invalid or voided provisions, whereby the purpose and scope of the original provisions are respected as much as possible.
6. If there is uncertainty about the interpretation of one or more provisions of these general terms and conditions, the explanation must be "in the spirit" of these provisions.
7. If a situation arises between the parties that is not regulated in these general terms and conditions, then this situation must be assessed "in the spirit" of these general terms and conditions.
8. If the User does not always require strict compliance with these general terms and conditions, this does not mean that the provisions thereof do not apply, or that the User would lose the right to strict compliance with the provisions of these terms and conditions in other cases, including the right to claim retroactively.

Article 2: Quotations and Offers

1. All quotations and offers from the User are without obligation, unless a term for acceptance has been set in the quotation.
2. The User cannot be held to its quotations or offers if the Client can reasonably understand that the quotations or offers, or part thereof, contain an obvious mistake or error.
3. The prices included in a quotation or offer are excluding VAT and other government levies, also excluded are any costs to be incurred in the context of the agreement, such as travel-, accommodation-, shipping- and administration costs, unless stated otherwise.
4. If the acceptance (whether or not on minor points) deviates from the offer included in the quotation or offer is the User not bound by it. The agreement will then not be concluded in accordance with this deviating acceptance, unless the User indicates otherwise.
5. A quotation consisting of multiple elements does not oblige the User to perform a part of the assignment against a corresponding part of the stated price. Offers or quotations do not automatically apply to future orders.

Article 3: Contract duration, delivery periods, implementation and amendment of the agreement

1. The agreement between the User and the Client is entered for an indefinite period of time, unless the nature of the agreement dictates otherwise or if the parties explicitly agree otherwise in writing.
2. If a term has been agreed or stated for the completion of certain activities or for the delivery of certain goods, this is never a final deadline. If a term is exceeded, the Client must therefore give the User written notice of default. The User must be offered a reasonable term to still execute the agreement.
3. If User requires data from the Client for the implementation of the agreement, the implementation period will not commence until after the Client has made the data available to User correctly and completely.
4. Delivery takes place Ex.Works of the User. The Client is obliged to accept and collect the goods when they are made available to the Client. If the Client refuses to collect or is negligent in providing information or instructions that are necessary for the collection, the User is entitled to store the goods at the expense and risk of the Client. Any costs arising from late collection will be charged to the Client.
5. The User has the right to have certain activities performed by third parties. This does not require approval from the Client, nor does the information need to be submitted at the Client.

6. The User is entitled to execute the agreement in different phases and to invoice the part executed separately.
7. If the agreement is executed in phases, the User can suspend the execution of those parts that belong to a following phase until the Client has approved the results of the preceding phase in writing and has paid any related invoices. If the Client does not act on time, delays and the resulting additional costs will be charged to the Client.
8. If during the implementation of the agreement it appears that it is necessary to amend or supplement parts for a proper implementation, then the parties will proceed to adapt the agreement timely and in mutual consultation. If the nature, scope or content of the agreement, whether or not at the request or direction of the Client, of the competent authorities, etc., is changed and the agreement is changed in terms of quality and / or quantity as a result, this may also have consequences for what was originally agreed. As a result, the originally agreed price can be increased or decreased. The User will provide a quotation of this in advance as much as possible. The originally stated term of execution may also be changed by an amendment to the agreement. The Client accepts the possibility of changes to the agreement, including the changes in price and term of execution.
9. If the agreement is amended, including an addition, then the User is entitled to implement it after approval has been given by the person authorized within User and the Client has agreed to the price and other conditions stated for the implementation, including the determination at what time it will be implemented. Not or not immediately executing the amended agreement does not constitute a breach of agreement on the part of the User and there is also no ground for the Client to terminate the agreement. Without being in breach of the agreement, the User can refuse a request to amend the agreement if this could have consequences in terms of quality and / or quantity, for example for the work to be performed or goods to be delivered in that context.
10. If the Client should be in breach in the proper fulfillment of what it is obliged to do towards the User, the Client is liable for all damage (including costs) on the part of the User that arises directly or indirectly.
11. If the User agrees on a fixed price with the Client, the User is nevertheless entitled at all times to increase this price as soon as there are valid reasons for this, without the Client being entitled in that case to terminate the agreement for that reason. If the increase in price arises from an obligation under the law or regulations or is caused by an increase in the price of raw materials, wages, etc. or on other grounds that were not reasonably foreseeable when the agreement was entered into.
12. If the price increase other than as a result of an amendment to the agreement amounts to more than 10% and takes place within three months after the conclusion of the agreement, only the Client who can rely on Title 5 Section 3 of Book 6 of the Dutch Civil Code and is entitled to dissolve the agreement by means of a written statement, unless the User is then still willing to execute the agreement on the basis of the originally agreed, or if the price increase arises from an obligation resting on the User under the law or if stipulated that the delivery will take place longer than three months after the purchase. In the event of dissolution, costs already incurred will be charged directly to the Client, which at that time is obliged to reimburse the costs.

Article 4: Suspension, termination and early termination of the agreement

1. User is authorized to suspend the fulfillment of the obligation or to terminate the agreement if:
 - The Client does not, not fully or not timely fulfill its obligations under the agreement;
 - After the signing of the agreement, the User becomes aware of circumstances that give good reason to suspect that the Client will not fulfill its obligations;
 - The Client was requested at the signing of the agreement to provide security for the fulfillment of its obligations under the agreement and this security is not provided or insufficient;
 - Due to the delay on the part of the Client, the User can no longer be expected to perform the agreement at the originally agreed term or price;
2. If the agreement is terminated, the claims of the User on the Client are immediately due and payable. If the User suspends the fulfillment of the obligations, the User will retain his rights under the law and agreement.
3. If User proceeds to suspension or termination, is the User in no way obliged to compensate damage and costs thereby incurred by the Client in any way.

4. If the termination is attributable to the Client, the User is entitled to compensation for damage, including the costs, caused directly and indirectly.
5. If the Client does not fulfill its obligations arising from the agreement and this non-compliance justifies termination, the User is entitled to terminate the agreement immediately and with immediate effect without any obligation on its part to pay any damages or compensation, while the Client, on account of breach of contract, is obliged to pay damages or compensation.
6. If the agreement is terminated prematurely by the User, the User will, in consultation with the Client, arrange for the transfer of work still to be performed to third parties. This unless the cancellation is attributable to the Client. If the transfer of work entails additional costs for User, these will be charged to the Client. The Client is obliged to pay these costs within the specified period, unless the User indicates otherwise.
7. In the event of liquidation, of (application for) suspension of payments or bankruptcy, of seizure - if and insofar as the seizure is not lifted within three months - at the expense of the Client, of debt restructuring or another circumstance that prevents the Client from freely access of his assets for longer, the User is free to terminate the agreement immediately and with immediate effect or to terminate the order or agreement, without any obligation on his part to pay any damages or compensation. The claims of the User on the Client are in that case immediately due and payable.
8. If the Client terminates a placed order in whole or in part, the items ordered or prepared for this, multiplied with any supply and delivery costs thereof and the working time spent and reserved for the execution of the agreement, will be fully charged to the Client.

Article 5: Force majeure

1. User is not obliged to fulfill any obligations towards the Client, if he is prevented from doing so as a result of a circumstance that is not attributable to fault, and neither by law, a legal act or generally accepted conception is at his expense.
2. In these general terms and conditions, force majeure is understood to mean, in addition to what is understood in this respect in law and jurisprudence, all external causes foreseen or unforeseen, which the User cannot influence, but as a result of which User is unable to fulfill his obligations. This includes strikes in the company of the User or of third parties. The User also has the right to invoke force majeure if the circumstance that prevents (further) fulfillment of the agreement occurs after the User should have fulfilled his obligation.
3. During the period that the force majeure continues, the User can suspend the obligations under the agreement. If this period lasts longer than three months, the User is entitled to terminate the agreement, without obligations to compensate damage to the Client.
4. Insofar as the User at the time of the commencement of force majeure has already partially fulfilled his obligations under the agreement or will be able to fulfill them, and the part fulfilled or to be fulfilled respectively has independent value, User is entitled to separately charge the part already fulfilled or to be fulfilled. The Client is obliged to pay this invoice as if it was a separate agreement.

Article 6: Payment and Collection costs

1. Payment must be made within 14 days after the invoice date, in a manner as indicated by the User and in the currency in which the invoice is made, unless stated otherwise by the User in writing. The User is entitled to invoice periodically.
2. If the Client fails to pay an invoice in time, the Client is in breach of agreement by law. The Client will then owe interest of 1.25% per day, unless the statutory interest is higher, in which case the statutory interest will be due. The interest on the due amount will be calculated from the moment that the Client is in breach until the moment of payment of the full amount owed, including the interest due is fulfilled.
3. The User has the right to have the payments made by the Client in first place in reduction of cost, then to reduce the interest that has fallen due and finally to reduce the principal sum and the current interest.
4. The User can, without being in breach, refuse an offer for payment if the Client indicates a different order for the allocation of the payment. The User can refuse full payment of the principal sum, if not the open and accrued interest and collection costs are also paid.
5. The Client is never entitled to set off the amount owed by it to the User.
6. Objections to the amount of an invoice do not suspend the payment obligations. The Client cannot invoke section 6.5.3 (Articles 231 to 247, Book 6 of the Civil Code) is also not entitled to suspend payment of an invoice for any other reason.

7. If the Client is in breach of agreement or omission in the (timely) fulfillment of its obligations, all reasonable costs incurred in obtaining settlement out of court will be charged to the Client. The extrajudicial costs are calculated on the basis of what is customary in Dutch collection practice, currently the calculation method according to Rapport Voorwerk II. However, if User has incurred higher costs for collection that were reasonably necessary, the costs actually incurred will be eligible for reimbursement. Any judicial and execution costs incurred will also be recovered from the Client. The Client also owes interest on the collection costs due.
8. If payment of the invoice is not received within the specified period, a daily fee of 1.25% will be added to the invoice. This is calculated from the first day that the invoice term has been exceeded until the moment that full payment is received by the User.

Article 7: Retention of title

1. All goods delivered by the User in the context of the agreement remain the property of the User until the Client has properly fulfilled all obligations arising from the agreement(s) concluded with the User.
2. Goods delivered by User that fall under the retention of title pursuant to paragraph 1, may not be resold and may never be used as a means of payment. The Client is not authorized to pledge or encumber in any other way the goods subject to retention of title.
3. The Client must always do what can reasonably be expected of him to secure the property rights of the User. Under the retention of title, it is also not allowed to move the property without the approval of the User.
4. If third parties seize the goods delivered under retention of title or plans to establish or seize rights thereon, the Client is obliged to immediately notify the User thereof.
5. The Client is obliged to insure the goods delivered subject to retention of title and to keep them insured against natural disasters, fire, explosion and water damage as well as against theft and to make the policy of this insurance available to User for inspection on first request. In case of a possible payment of the insurance the User is entitled to these fees. Insofar as necessary, the Client commits to the User in advance to cooperate with everything that is or appears to be necessary or desirable in that context.
6. In the event that the User wishes to exercise its property rights as indicated in this article, the Client gives in advance unconditional and irrevocable permission to the User and third parties to be designated by the User to enter all those places where the properties of the User are located and to take those properties back. Costs for the exercise of the recovery of the property will be fully charged to the Client.

Article 8: Guarantees, research and complaints, limitation period

1. The goods to be delivered by the User meet the usual requirements and standards that can reasonably be set for them at the time of delivery and for which they are intended for normal use in the Netherlands. The guarantee referred to in this article applies to items intended for use within the Netherlands. When used outside the Netherlands, the Client must verify itself whether the use thereof is suitable for use there and meet the conditions set for it. In that case, the User can set other guarantees and other conditions with regard to the goods to be delivered or work to be performed.
2. The guarantee referred to in paragraph 1 of this article applies for a period of 6 months after delivery, unless the nature of the delivery dictates otherwise or the parties have agreed otherwise in writing.
3. The Client is obliged to inspect the delivered goods or have them inspected immediately at the moment that the goods are made available to the Client or the relevant activities have been carried out. In addition, the Client should investigate whether the quality and / or quantity of the delivered goods corresponds with what has been agreed and meets the requirements that the parties have agreed in this respect. Any visible defects must be reported to User in writing within seven calendar days after delivery. Any invisible defects must be reported to the User in writing immediately, but in any case no later than fourteen calendar days after discovery thereof, with a maximum period of three months after delivery. The report must contain a description of the defect that is as detailed as possible, so that the User is able to respond adequately. The Client must give the User the opportunity to investigate a complaint or have it investigated.
4. If the Client makes a timely complaint, this does not suspend its payment obligation. In that case, the Client also remains obliged to purchase and pay for the other items ordered.
5. If a defect is reported later, the Client will no longer be entitled to repair, replacement or compensation.

6. If it is established that an item is defective and a timely complaint has been lodged in this regard, the User will within a reasonable period after return receipt of the defective goods, or if return is not reasonably possible, provide written notification with this regard of the defect to the Client, at the User's option, replace or arrange for repair thereof or pay a replacement fee for it to the Client. In the event of replacement, the Client is obliged to return the replaced good to User and to transfer ownership thereof to the User, unless the User indicates otherwise. Any travel, accommodation and / or transport costs are excluded and are at the expense of the Client.

7. If it is established that a complaint is unfounded, the costs arising as a result, including research costs, incurred by the User as a result, will be fully for the account of the Client.

8. After expiry of the warranty period, all costs for repair or replacement, including travel-, accommodation-, administration-, shipping- and call-out costs, will be charged to the Client.

9. Contrary to the statutory limitation periods, the limitation period of all claims and allegations against User and third parties involved by User in the performance of an agreement is one year.

Article 9: Liability

1. If User should be held liable, then this liability is limited to what is regulated in this provision.

2. The User is not liable for damage, of whatever nature, caused by User based on incorrect and / or incomplete information provided by or on behalf of the Client.

3. If User should be liable for any damage, then User's liability is limited to a maximum of the invoice value of the order, at least to that part of the order to which liability relates.

4. The User's liability is in any case always limited to the amount paid out by his insurer for the specific case and / or situation.

5. The User is only liable for direct damage.

6. Direct damage is exclusively understood to mean the reasonable costs to determine the cause and extent of the damage, insofar as the determination relates to damage within the meaning of these terms and conditions, any reasonable costs incurred to compensate the User's defective performance, insofar as these can be attributed to the User and reasonable costs incurred to prevent or limit damage, insofar as the Client demonstrates that these costs have led to a limitation of direct damage as referred to in these general terms and conditions.

7. The User is never liable for indirect damage, including consequential damage, loss of profit, missed savings and damage due to business interruption.

8. The limitations of liability included in this article do not apply if the damage is due to the intent or gross negligence of the User or his supervisor and / or subordinates.

Article 10: Transfer of risk

1. The risk of loss, damage or depreciation transfers to the Client at the moment when goods are transferred under the control of the Client.

Article 11: Indemnity

1. The Client indemnifies the User against any claims from third parties who suffer damage in connection with the performance of the agreement and the cause of which is attributable to others than the User.

2. If the User should be addressed by third parties on that basis, the Client is obliged to assist the User both in and out of court and to immediately do everything that may be expected of the Client in that case. If the Client fails to take adequate measures, the User is entitled to do so itself without notice of default. All costs and damage on the part of the User and third parties that arise as a result, are fully for the account and risk of the Client.

Article 12: Intellectual property

1. User reserves all the rights and authorizations that are entitled to the User under the Copyright Act and other intellectual laws and regulations. The User has the right to use the knowledge gained through the performance of an agreement for other purposes, insofar as no strictly confidential information of the Client is disclosed of third parties.

2. The Client is expressly prohibited from reproducing those products, including software, system designs, working methods, advices, (model) contracts and other intellectual property of the User, in the broadest sense of the word, with or without the involvement of third parties, to duplicate, publish or exploit, unless these products are expressly and (recorded in writing) intended for multiplication, disclosure and / or exploitation. Disclosure

can therefore only take place after permission has been obtained from User. Naturally, the Client has the right to multiply the written documents for use in its own organization, insofar as this is appropriate for the purpose of the assignment. In case of premature termination of the assignment, the foregoing of the agreement applies.

3. Trademarks of the User on the equipment, material and / or documents may not be removed or hidden, the original trademarks of the User must be kept clearly visible by the Client. For publications regarding the use and application of the User's technology, the Client must appoint the User, for which written permission must be obtained from the User.

4. With the use of the technology consisting of hardware, software, material and information of the User, the Client understands and agrees that the use will be monitored, with the collecting data and statistics, this will be stored. The data will be used to improve the User's technology.

5. Information from the User's technology and other information about hardware, software, material and information is and remains the User's intellectual property. This includes copyright and all worldwide rights granted under the law, Dutch law relating to inventions (including patents), registered and unregistered trademarks, designs, software, data and databases, confidential information, experience and all other rights arising from intellectual activity. Intellectual property has a consistent meaning: any improvement, modification or derivative work of the intellectual property. The intellectual property remains the property of the User and is timely unlimited and continues to exist even after termination of this agreement. Other provisions with regard to the software rights and obligations are included in the EULA of the User, the latest version of which can be requested from the User and are applicable on this agreement.

Article 13: Export control

1. The Client acknowledges that the supplies may be subject to domestic and/or foreign statutory provisions and regulations regarding export control and, without export or re-export authorization(s) from the competent authorities, may not be sold, leased or otherwise transferred or used for a purpose other than that agreed upon. The Client agrees to comply with such provisions and regulations. The Client acknowledges that such provisions and regulations may change and are applicable to the agreement according to the wording valid at the time. The technology may neither directly nor indirectly be used in any way in connection with the design, production, use or storage of chemical, biological or nuclear weapons or carrier systems. The technology may not be used for military or nuclear applications without the Users prior written consent.

2. The User's acceptance of any order will be conditional upon:

- The grant of export and/or re-export authorization(s) by the competent authorities in the countries of origin of the offered products including their parts and components and/or technology if and to the extent legally required. Refusal, withdrawal or invalidity of the said export and/or re-export authorizations due to any event beyond the reasonable control of the User shall discharge the User from its contractual obligations in relation to the delivery of the products, technology and/or services concerned;
- The compliance with all applicable export rules and regulations, both internal rules and regulations of the User as well as external rules and regulations.

3. Furthermore, the Client shall request prior written approval of the User in case the (end)customer is located in one of the following countries: North Korea, Somalia, Sudan, Afghanistan, Crimea, Cuba, Falkland/Malvinas Islands, Iran, Iraq, Libya, Mali, Myanmar, Niger Delta, South Sudan, Syria, Venezuela, Yemen, Colombia, Israel, Kyrgyzstan, Pakistan, Palestine, Nigeria (Excluding Niger Delta), Russia, Saudi Arabia, Tajikistan, Turkmenistan, Uzbekistan, Zimbabwe.

Article 14: Applicable law and Disputes

1. All legal relationships to which User is a party are exclusively governed by Dutch law, even if an obligation is fully or partially implemented abroad or if the party involved in the legal relationship is residential there. The applicability of the Vienna Sales Convention is excluded.

2. The judge in the User's place of business has exclusive jurisdiction to address disputes, unless the law prescribes otherwise. Nevertheless, the User has the right to submit the dispute to the competent court according to law.

3. The parties will appeal to the courts after they have made every effort to settle a dispute in mutual consultation.

4. The Dutch text of the general condition is always decisive for the interpretation thereof.