

GENERAL TERMS AND CONDITIONS

Omori Europe B.V.

ARTICLE 1 – Applicability

1. These general terms and conditions apply to all our quotations, offers, confirmations of order, sales and supply of goods and services by Omori Europe B.V. and its affiliates to clients. Deviations from these general terms and conditions are not allowed unless explicitly approved by us in writing.
2. Unless explicitly agreed upon by us in writing, general terms and conditions of clients or others shall not apply and shall not be deemed to constitute any modification of our terms and conditions.

ARTICLE 2 – Offers

1. All our offers and quotations are without obligation. We shall not be bound to such time-limit until our acceptance in writing of an order placed.
2. Unless explicitly provided otherwise, each offer shall be based on execution under normal circumstances and during normal working hours.
3. Illustrations and numbers in our offers and quotations only serve to give minimum indications and deviations thereof, insofar as not of a substantial nature, after delivery of goods or execution of work shall not entitle the client to reject acceptance of goods or refuse payment thereof and do not affect conformity.

ARTICLE 3 – Price

1. Unless agreed otherwise in writing, prices quoted by us for the supply of goods are based on delivery ex warehouse or ex factory, it being understood that goods shall be ready for shipment at our warehouse in Oldenzaal, the Netherlands, or at the manufacturer's warehouse.
2. If, after the date of offering one or more elements of the cost price should be subject to any increase, even if on account of circumstances already existing at the date of offering, we shall be entitled to increase the price agreed upon on acceptance of the offer correspondingly.
3. Unless stated otherwise, prices quoted by us shall be exclusive of V.A.T. and any further levies and taxes payable on account of the execution of an agreement.
4. We shall be entitled to charge costs for any work and supply exceeding that stipulated in the offer, agreement or confirmation of order.
5. We shall be entitled to charge any packaging
6. A loading and unloading and transport costs (if any) regarding goods to be supplied under an agreement as well as the cost of models and equipment made available by us are not included in the prices quoted by us and shall be charged separately; any costs relating thereto paid by us shall be considered to have been advanced and shall be for the client's account.
7. If we have undertaken to install and assemble goods, ordered prices are inclusive of assembly and delivery of goods ready for operation at the place specified in the offer, except for such costs as referred to in the preceding article. In case assembly has not been provided for in the agreement, assistance provided by us shall be charged separately.

ARTICLE 4 – Period of delivery

1. The period of delivery for goods and services shall commence after the order has been accepted by us in writing. In addition, if payment in installments has been agreed on acceptance of an order and the first installment is payable on ordering, the period of delivery shall not commence until we have received such first installment. In that case the period of delivery shall be extended by as many days as the relevant date of payment is exceeded with by the client.
2. The period of delivery or other term stated by us shall never be fatal.

ARTICLE 5 – Delivery and transfer of ownership

1. Unless explicitly provided otherwise in writing, the delivery of goods shall be considered to take place at our warehouse in Oldenzaal or at the manufacturer's facilities. From that moment a client will bear the full risk of the goods including, but not limited to direct or indirect damage or loss caused to or on account of said goods suffered by the client or any third party shall be for the client's risk. The ownership of the goods shall not be transferred to the client until any amount due to us by the client in relation to such goods or earlier or later deliveries, including any amount of interest and costs has been paid, without prejudice to the provisions of this article relating to the aforementioned risk and any rights acquired by any third party.
2. In case of non-payment of a claim such security shall be sold according to the procedure provided for by law or, if agreed upon, by private contract. The client shall be obliged to provide at our request additional security for goods or services to be supplied by us, on failure whereof all our obligations shall be suspended until such request has been complied with.
3. Client shall be obliged to timely take over and take up the goods.

ARTICLE 6 – Payment

1. Payment shall be effected in the manner agreed or, in the absence of an explicit arrangement, within 14 days from the date of invoice or into a specified bank account. We shall be entitled to require one or more advance payments or deposits. In such case we shall be entitled to suspend the delivery of goods or rendering of services until the moment we have received such advance payment.
2. Unless agreed upon in writing in advance, a deduction for cash payment shall not be allowed.
3. The client is, if he does not pay within the agreed period, in default by operation of the law and we shall be entitled without further demand or notice of default to charge him a monthly interest of 1%.
4. Payments shall be considered to be deducted from ordinary claims in the first place, irrespective of any instructions accompanying such payments.
5. If in the event of overdue payment of a claim collection thereof is effected by legal proceedings or otherwise, such claim shall be increased by the amount of 10%, while in addition any out of court expenses, including the fee of the solicitor charged with the collection of such claim, shall be for the account of the client to the extent such expenses are payable by us or have been paid by us.
6. Client will not be entitled to set off any amounts due to us.

ARTICLE 7 – Guarantee and claims

1. We guarantee new goods only to the extent such goods are guaranteed by our supplier. Wages and travelling expenses of engineers and servicemen incurred on account of repairs shall always be for the account of the client. No guarantee is provided on second hand goods supplied by us unless explicitly agreed otherwise.
2. Goods or parts thereof which are replaced by new goods or parts shall become our property on account of such replacement, without any compensation on our part being required.
3. Any claim on account of visible defects in goods is to be put in by the client when testing such goods or inspecting such goods in our warehouse or, in the absence of tests or inspections, within 14 days after he has received the goods, on failure whereof any right to repair, replacement or compensation of damages shall be cancelled.
4. Any claim with respect to a defect which is not visible externally, shall be put in by the client within 14 days after such defect is established or reasonably should have been established, on failure whereof any right to repair, replacement or compensation of damages shall be cancelled.
5. Any defective goods to be replaced or repeated shall be returned to us by client at client costs.
6. No claim shall be considered by us and all our guarantee obligations shall be cancelled if it appears that the client or any third party has carried out repairs on or made changes to the goods without our permission.
7. In case a claim is put in within the periods specified in the preceding paragraphs, our obligations towards the client shall be limited to replacing or repairing the defective goods or, at our discretion, compensating the net invoice amount of the goods concerned, without any further obligation on our part to pay damages.
8. Any guarantee claims by client shall be limited to 50% of the order value.

ARTICLE 8 – Assembly and commissioning

1. Unless explicitly provided otherwise in writing, any installation and/or provisions and/or operations required for the erection and commissioning of goods supplied shall be for the account and risk of the client. If it has been agreed that the assembly and commissioning of goods are to be carried out by us, the client shall for his account and risk take care that:
 - a. our personnel can start work immediately on arrival at the place of erection and in addition at all times will be enabled to carry out work at times we think necessary;
 - b. appropriate accommodation and/or facilities required by law (e.g. Factory Act) are put at the disposal of our personnel;
 - c. the access roads to the place of erection are suitable for transport and that the designated building site is suitable for storage and assembly;
 - d. the required preliminary work such as brick-laying and foundation, demolition and carpentry work has been carried out and the required, customary auxiliary personnel equipment and materials and other required materials as well as connections to the gas and water mains and electricity grid have been provided for;
 - e. The required safety measures and other precautions have been taken and will be maintained.
2. In case of a delay due to non-compliance with one of the aforementioned points, the delivery period shall be extended by such a period as, taking all circumstances into consideration, may be reasonable and fair, while any resultant costs and loss shall be for the client's account.

ARTICLE 9 – Liability

1. We shall not be liable to a client or third party for any direct or indirect damage or loss on account of the agreement, irrespective of the nature or cause thereof, unless it is proved that such damage or loss is due to willfulness or gross negligence, which shall be considered equivalent thereto, on our part.
2. Except for product liability we shall not in any way be liable or pay any compensation for any direct or indirect damage or loss suffered on account of any defect in any product supplied by us. If necessary, we are prepared to assist in tracing the manufacturer responsible for such defect, in case such loss should occur.
3. In no case our liability will exceed the amount awarded by our liability insurance in the case at hand.

ARTICLE 10 – Cancellation

1. If we are unable to perform the agreement by force major we shall be entitled, without prejudice to any further rights we may have under this agreement, to suspend execution of the agreement or to cancel the agreement fully or partly, without being bound to pay any compensation.
2. By force major shall be understood circumstance as a result of which the client cannot reasonably require us to fulfill the agreement including: war, danger of war, civil war, riots, revolts, strikes, lock outs of workers, transport difficulties, fire and other disturbances in our enterprise or that of any of our suppliers, any delay in the delivery of goods, base or other materials or parts ordered in time by us, irrespective of the cause of such delay.
3. If the client fails to comply or does not comply properly or in time with any of his obligations under this or any other agreement concluded with us as well as in case the client's enterprise is put into liquidation, is granted a moratorium or is closed down, he shall be considered to be in default by operation of the law, and in such case we shall be entitled without any notice of default and decision of any court being required, to suspend the performance of the agreement or to dissolve the agreement, either fully or partly, as we may deem proper, without being bound to pay any compensation, however, without prejudice to any further rights we are entitled to with respect to any loss suffered by us. In such case any claim we have or will acquire against the client shall immediately and fully be payable.

ARTICLE 11 – Jurisdiction and applicable law

1. The agreements to which these general terms and conditions apply as well as any agreement resulting from it shall be governed by Dutch law CISG will not apply.
1. Any dispute which may arise between the parties on account of this agreement or any agreement resulting from it, including disputes considered as such only by one of the parties, shall in the first instance be decided by the competent court in Almelo, The Netherlands.