

# GENERAL CONDITIONS

## Introduction

The following general conditions shall apply to all offers to be made and agreements to be concluded by Spiralex bv in Krimpen aan den IJssel for the supply of goods or the rendering of services.

### 1. Definitions

#### 1.1 Equipment

The equipment as specified in the offer.

#### 1.2 Services

All the services relating to engineering, project administration, purchasing supervision, construction, installation, repair, maintenance and other services as they may be mentioned or described in the offer.

#### 1.3 Offer

The document in which the equipment and the services to be rendered by the vendor are described and offered for sale or performance.

#### 1.4 Vendor

The company (Spiralex) which makes the offer.

#### 1.5 Buyer

The (legal) person to whom the offer is made.

#### 1.6 Price

The amount of money due to the vendor for the equipment and services as mentioned in the offer.

#### 1.7 Factory installation

The equipment and, if applicable, both the building and the components and parts originating with other manufacturers and/or suppliers, directly or indirectly, for the benefit of the manufacture of the buyer's products, which shall form part of the equipment.

#### 1.8 Building site

The location where the equipment will be installed and, if applicable, the building will be erected, or the services to be rendered will be performed.

#### 1.9 Take-over

The time at which the factory installation or any part of it has been put into operation in conformity with the procedure applicable to it, or, if sooner, taken into use by the buyer.

#### 1.10 Take-over and/or performance criteria

The guaranteed performance level of the equipment if this is mentioned in the offer.

### 2. Offers and conclusion of agreements

#### 2.1

Unless agreed differently in the offer an offer shall be valid during 60 (sixty) days and it will have expired if the offer has not been accepted by the buyer within that period.

#### 2.2

Agreements shall only come about by the buyer's explicit acceptance of a written offer made for the purpose by the vendor, unless it concerns an urgent order, in which case the agreement is brought about by the vendor's written confirmation of sale.

#### 2.3

Orders in respect of changes in the size of the delivery, hereinafter called 'order alterations'.

##### 2.3.1

The parties may order changes in the whole extent of the vendor's obligations. The vendor shall not be obliged to accept such a change until both the vendor and the buyer have signed an order alteration form. The order alteration form shall state both the change in the whole extent of the vendor's obligations and any change in price performance parameters, delivery, time schedule or other provisions of these conditions, to the extent agreed by vendor and buyer. If the vendor and buyer do not agree on any change in price, performance etc. this shall not be considered a statement of waiver by the vendor to demand such a change at a later time.

##### 2.3.2

Unless stated differently in the order alteration form each price increase that is to be imputed to the order alteration shall be paid in accordance with the schedule of payments included in the offer or in these conditions.

### 3. The vendor's obligations

#### 3.1

The vendor shall supply the equipment and services free from defects in design, material and execution and in accordance with the demands of good workmanship to be set in reason, all this as specified in the warranty provisions included below under 8.

#### 3.2

The vendor shall be obliged to fulfil his obligations, as stated in the offer and these general conditions, fully in time and skilfully and to observe the necessary care to look after the buyer's interest.

#### 3.3

The vendor shall supply the equipment and/or perform the services in conformity with an agreed time schedule. If such a schedule is lacking, all this shall be effected to the best of his capacity and, in so far as reasonably possible, taking account of the buyer's wishes in the matter.

### 4. The buyer's obligations

#### 4.1

The buyer shall see to the acquisition of all necessary permits, permissions and approvals for the supply and installation of the equipment and/or for the performance and completion of services.

#### 4.2

The buyer shall be obliged to fulfil his obligations as mentioned in the offer and these general conditions in full and strictly in time.

#### 4.3

The buyer shall make available everything that is not described as belonging to the vendor's responsibility but is nevertheless necessary to enable the vendor to meet his obligations. Without limiting the generality of the above they shall include among other things: the provision of unrestricted access to the building site, the supply of all tools, provisions, facilities and connections required for the proper installation and the starting and testing of the equipment at the building site and the free provision of sufficient telephone, telex or telefax facilities and office space if this is necessary or conducive to the vendor in connection with the performance of his work in reason.

#### 4.4

The buyer shall fulfil his obligations in conformity with an agreed time schedule. If such a time schedule is lacking the buyer shall fulfil matters in such a manner that the vendor may perform his operations in time.

### 5. Price

#### 5.1

The price mentioned in the offer excludes all taxes.

#### 5.2

Considerations or expenses that have not been described as belonging to the vendor's responsibility shall be for the buyer's account. The buyer shall pay them to the vendor immediately or, if the vendor makes this known, make moneys available for the purpose beforehand.

#### 5.3

If owing to causes outside the risk sphere of the vendor or his sub-contractors the delivery of the equipment and/or the performance and completion of one or more services of the vendor are delayed and that delay causes the vendor extra expenses that cannot be recovered from third parties, the vendor shall be entitled to charge the buyer all actual expenses caused by that delay and demonstrably made.

#### 5.4

In so far as no fixed price has been agreed, all the operations, goods and services shall be paid for on the basis of time spent and the expenses made, this on the basis of the vendor's then prevailing normal rates and prices, unless the contrary has been explicitly indicated in the offer. Additions for overtime shall be charged if any services or operations must be carried out outside the vendor's normal working hours.

### 6. Payment and security

#### 6.1

The buyer shall be obliged, on the vendor's first demand, at the time of conclusion of the agreement or at any later time, to give sufficient security (this in form, contents and provider to the vendor's satisfaction) for the whole and timely payment of the price or any unpaid part of it.

#### 6.2

Unless the offer states differently, payment is to be made within 30 (thirty) days after the invoice date in the manner indicated by the vendor, without any deduction, discount or right to set-off. If buyer does not fulfil its payment obligations in time, nor does fully comply with a notice of default within one week, vendor is empowered to consider the purchase agreement as cancelled without legal interference. In such case buyer is liable for damage incurred by vendor.

#### 6.3

If payment has not been made in time on the due date, the buyer owes the vendor interest, without any further notice of default or announcement being required, on the amount not paid in time at a rate of 1 (one) per cent on a monthly basis.

#### 6.4

If the vendor is compelled to engage third parties for the collection of anything due to him, the buyer shall be obliged to pay in full all the judicial and extrajudicial collecting charges to be made by the vendor for the purpose. Such costs amount to 10 (ten) percent of the invoiced amount, with a minimum of 125 (one hundred and twentyfive) Euro and a maximum of 15,000 (fifteen thousand) Euro.

#### 6.5

If the buyer does not strictly fulfil his obligations of payment to the vendor the vendor shall be entitled, without prejudice to his other rights, including those to compensation as a result of the delay in the performance of the agreement and without prejudice to all the legal resources at his disposal, to suspend his obligations from the agreement and any other agreements with the buyer until the buyer has met all his obligations.

### 7. Delivery and acceptance

#### 7.1

Unless the offer provides differently, the risk of loss of or damage to the equipment and the responsibility for payment of the insurance premiums and the freight shall pass to the buyer at the time that the equipment leaves the warehouses of the vendor or supplying companies or subcontractors engaged by the vendor.

#### 7.2

Unless provided differently, the vendor shall pack the equipment, at his own expense, in a suitable manner to protect it during transport. Every packing or unpacked article shall be marked properly and be provided with a label.

7.3

Unless stated differently, the period for delivery of the equipment and/or performance and completion of the services shall commence after determination of all the technical and commercial conditions including the vendor's receipt of every agreed prepayment and of every security desired by the vendor for the balance of the price.

7.4

The vendor's ability to deliver the equipment in time or to perform and complete the services in time shall depend explicitly on the buyer's timely fulfilment of all his obligations as stated in the offer and in these general conditions. If the buyer does not fulfil his obligations in time and if the vendor consequently is unable to deliver the equipment and/or the services in time, the vendor shall have no liability to the buyer for any delays arisen.

7.5

If the vendor fails to deliver the equipment or to complete the services in conformity with the time schedule, the vendor may be compelled to pay the buyer compensation. The vendor's obligation to pay compensations shall only apply if the vendor has guaranteed delivery or completion explicitly on a fixed date and shall only apply if failure to meet the last date guaranteed as such is exclusively due to the vendor. Unless stated differently that compensation shall be 0.25 (point twenty five) per cent of that part of the price that relates to the part of the equipment and services delivered late for every full week's delay. In no event shall the compensation exceed 5 (five) per cent of that part of the price. Apart from payment of the said compensation in the said cases any liability of the vendor for damage caused by delay in deliveries or services shall be excluded.

7.6

If the vendor is not able to deliver equipment and/or services in accordance with the time schedule owing to culpability or circumstances lying within the risk sphere of the buyer or of the buyer's agents or sub-contractors the buyer shall nevertheless be obliged to pay the vendor in conformity with the payment schedule.

7.7

If the buyer is unable or unwilling to cooperate in delivery of the equipment at the time stated in the time schedule or in these conditions the vendor may store the equipment at the buyer's expense. In that case the equipment shall be deemed to have been delivered at the date of storage, this with a view to the payment and the timeliness of the delivery by the vendor.

7.8

Until full payment has been made of everything that the buyer owes the vendor in respect of matters supplied by the vendor to the buyer or services performed by the vendor or in respect of the buyer's failure to perform agreements concluded on the strength of these general conditions, the equipment delivered and yet to be delivered shall remain the vendor's property.

7.9

Until full payment has been made the buyer shall insure all the equipment for which he runs the risk of loss, for the full replacement value of the equipment against loss, damage or destruction by theft, fire or other calamities. At the vendor's request the buyer shall have the vendor included contractually as extra insured (co-insured) and/or produce proof of such a necessary insurance, to the vendor's satisfaction. Every insurance payment shall first be used to pay the vendor any part of the price of the lost, damaged or destroyed equipment that has remained unpaid. The surplus of the payment shall be due to the buyer. The buyer hereby waives subrogation vis-à-vis the vendor and shall see to it that his insurer does so.

7.10

The buyer shall be entitled to inspect the equipment at a reasonable period prior to the transport provided he does this within 30 (thirty) days after acceptance of the offer to the vendor with an exact statement of the components and parts of the equipment that he wishes to inspect. This notification must be given in writing at not less than 15 (fifteen) days notice before the said inspection date.

7.11

The buyer shall bear all costs and expenses of such an inspection except those costs/expenses that relate to the vendor's personnel and to the normal factory tests.

7.12

Unless it has been explicitly stated differently as belonging to the vendor's responsibility the buyer shall immediately unpack and inspect the equipment at the site of delivery. The vendor may be present at such an inspection at his option. Within 48 (forty eight) hours after inspection the buyer must notify the vendor of any part of the equipment that is lacking, damaged or shows defects. Failing this, any claim of the buyer for any visible defect and or damage to the equipment shall lapse. The buyer's notification in respect of lacking, damaged or defective equipment shall not be proof of the state of the equipment at the time of the delivery.

## 8. Warranty

### 8.1 Warranties in respect of the mechanical part of the equipment

8.1.1

The vendor warrants that every part of the equipment is free of defects in design, material and execution.

8.1.2

The warranty period for every part of the equipment shall last for 1 (one) year counting from the take-over or 18 (eighteen) months counting from the despatch, depending on the period that lapse first. The warranty period for repairs or replaced parts shall last for 3 (three) months or the maintenance period according to the original Spiralex manuals, depending on the period that laps first, counting from the date of repair/replacement or installation/commissioning.

8.1.3

The vendor shall repair, replace or, at his choice, refund the price of equipment that shows defects during the warranty period. In the event of repairs or replacement of (parts of) the equipment under this warranty the materials used for the purpose shall be for account of the vendor. The labour, hotel and travelling expenses involved shall be for account of the buyer. The vendor excludes all further liability in respect of equipment that does not meet the above-mentioned warranty in respect of the mechanical part of the equipment or any other warranty in respect of the mechanical part of the equipment stated in the offer. The buyer must inform the vendor in writing of the defect to which the complaint refers and this immediately after the defect appeared and in no event later than 48 (forty eight) hours after the end of the warranty period.

8.1.4

The vendor shall not be liable for damage to the equipment as a result of:

- normal wear and tear
- unintended use, wrong use, abuse or wrong storage, installation, maintenance, operation or repairs by the buyer or by persons who are not under the vendor's supervision.

8.1.5

Unless provided differently the buyer shall bear the expenses and the risk of loss of or damage to the defective equipment during transport to the vendor. The vendor shall bear the expenses and the risk of loss of or damage to repaired or replaced parts of the equipment during transport to the buyer. Any defective part of the equipment that is replaced by the vendor shall subsequently become vendor's property.

8.1.6

The vendor shall give no further warranties that deviate from the warranties embodied in these conditions and in the offer nor any tacit warranties, irrespective whether they concern the saleability, suitability for a specific purpose or otherwise.

### 8.2 Warranties on services

8.2.1

The vendor warrants that the services shall be performed with a skill and care required a customarily accepted good skilful and technical performance of operations. When performing his services the vendor shall observe all due care, proceed in a considered way and apply good engineering.

8.2.2

The vendor shall perform again all services that are not in agreement with the required, above-mentioned degree of skill and care, on condition that the buyer informs the vendor of any supposed defectiveness within 3 three months after completion. The vendor excludes all further liability in respect of services that do not comply with the above-mentioned standards.

8.2.3

The vendor shall not be liable for any shortcomings in the services caused by:

- design parameters that have been stipulated by other persons that the vendor;
- information given by the buyer or persons under the supervision of or related to the buyer;
- work performed by persons who are not under direct supervision of the vendor.

## 9. Drawings and technical particulars.

9.1

All descriptive details in advertisements, catalogues, brochures, circulars or the like shall only be indicative. They shall not be regarded as a warranty or statutory obligation of the vendor unless explicitly included in any take-over or performance criterion.

9.2

All drawings or particulars of the buyer shall remain the buyer's property. Except in so far as this should be necessary for the vendor to fulfil his obligations, the vendor shall not, without the buyer's prior approval, make available or communicate any drawings or particulars designated as confidential by the buyer to third parties that are not associated with him.

This obligation to maintain secrecy shall not apply to drawings and particulars that are already generally available or that had already been known to the vendor before the buyer made them known.

9.3

Unless explicitly stated differently all confidential information that is the vendor's property shall remain the vendor's sole and exclusive property. The vendor shall grant the buyer a permanent, non-exclusive, non-transferable license to make use of that confidential information that is the vendor's property in so far as necessary to use the equipment for the purpose mentioned in the offer.

9.4

All drawings and technical particulars supplied by the vendor shall be considered confidential, with the exception of those drawings and particulars that are already generally available or had already been known to the buyer before they were made known by the vendor. Without the vendor's prior approval the buyer shall make not available or communicate any confidential drawings or particulars to third parties without the vendor's prior approval or make use of them with another purpose than to use the equipment.

9.5

All drawings that require the buyer's approval according to the offer shall be approved or rejected by the buyer within 10 (ten) days after receipt and in the event of rejection be provided with a detailed comment by the buyer. Non-rejection within the said period shall be considered approval of the buyer.

9.6

Unless explicitly stated differently, all the drawings and technical particulars shall be in agreement with the vendor's standard design procedures and another language may be used.

9.7

The buyer shall not make any alterations in any drawings of the vendor, without the vendor's prior written approval. If the buyer alters the drawings without vendor's approval, the vendor may, at his discretion, void any warranty that should be adversely affected thereby.

## 10. Liability

10.1

The vendor shall owe the buyer compensation for damage only and in so far as it has been provided in these conditions.

10.2

The vendor shall be liable for direct damage to the buyer's equipment or factory installation caused by carelessness or negligence of persons working in his employment or by his order.

### 10.3

Apart from the case mentioned above in 10.2 the vendor shall not be liable for direct, indirect, extraordinary, consequential or additional damage (including but not limited to loss of profit, loss of use, production, raw materials or final products), or for any other damage resulting from the performance of services or operations by the vendor or resulting from the purchase, delivery, installation or use of any equipment, components and parts of replacement components and parts supplied by the vendor, irrespective whether they are claimed on the strength of agreement, warranty, tortious act or otherwise. The vendor's total liability for any loss, damage or indemnification, including compensation of damage, payment and fine, and direct damage to the equipment or factory installation supplied shall never exceed the amount of 10% of the price of goods supplied and services rendered.

### 11. Force Majeure etc.

#### 11.1

A party may rely on force majeure if performance and fulfilment of obligations to the other party are delayed, hampered or prevented by circumstances beyond its control, whether or not they were foreseeable and also, in so far as not already included there in, war, risk of war, civil war, riot, strike, lock-out, transport difficulties, fire and other serious interruptions in the business of the vendor or his supplier.

Regarded as force majeure in particular shall be non-delivery of untimely delivery to the vendor by his supplier; or if the goods sold by the vendor's supplier do not reach the vendor or not in time. To be able to rely on force majeure and therefore to be released from timely fulfilment of obligations he must inform the other party at once.

In spite of any force majeure that may be claimed by virtue of this article, the buyer shall pay the vendor for the services performed and equipment (or parts thereof) manufactured or delivered up to the day of notification.

#### 11.2

A party relying on force majeure owing to the circumstances indicated in paragraph 1 must in reason take all those measures that may restrict its duration and results.

Immediately after the end of those circumstances the party relying on force majeure shall inform the other party in writing.

#### 11.3

Any documentary credit or other security bound by time for payment of the price shall be extended by a period that is equal to the delay in the vendor's performance as a result of force majeure.

#### 11.4

If such circumstances last longer than 6 (six) months, each of the parties shall be entitled to declare the unfinished part of the agreement dissolved by their written notification to the other party.

### 12. Take-over and performance criteria

#### 12.1

Compliance with take-over and performance criteria shall be proven during the testing of the equipment. That compliance shall be explicitly dependent on the fulfilment of the following conditions as well as on all other conditions stated in the take-over and performance criteria or in the procedure for the completion of the factory installation:

##### 12.1.1

The proper installation of the equipment, if not installed by or under the supervision of the vendor, everything to the vendors' satisfaction;

##### 12.1.2

The proper quantity and quality of raw materials, provisions and consumer goods, everything to the vendor's satisfaction;

##### 12.1.3

Compatibility and proper installation of equipment that has not been supplied by the vendor, everything to the vendor's satisfaction.

##### 12.1.4

Availability of skilful and sufficient personnel during the procedure for the completion of the factory installation, everything to the vendor's satisfaction;

##### 12.1.5

The warranty period of the equipment not having expired.

#### 12.2

The vendor shall not be obliged to commence or continue tests before the above-mentioned conditions have been met by the buyer.

#### 12.3

The test procedure will be performed as agreed by the vendor and the buyer, but failing agreement, as the vendor considers reasonably suitable in conformity with habit and custom in the relevant trade or industry.

#### 12.4

If the equipment or any part of the equipment does not meet the take-over and/or performance criteria, the vendor shall make all alterations in and modifications to the equipment that he considers suitable, at his expense. The vendor may then repeat the tests.

#### 12.5

If, after the application of modifications and alterations, the vendor is not able to meet the take-over criteria the buyer shall be entitled to return that part of the equipment that consequently does not comply, against a refund of the contract price.

### 12.6

If, after the application of modifications and alterations the vendor is not able to meet the performance criteria, the buyer shall be entitled to accept that part of the equipment that consequently does not comply at an adjusted price. The price adjustment shall be based on the relation between the actual performance level and the guaranteed level. The maximum price adjustment shall be 10 ten per cent. If the actual performance is less than 90 (ninety) per cent of the guaranteed level, the buyer, at his option and instead of the said price adjustment, may return that part of the equipment against refund of the contract price, reduced by a depreciation on it of 20 (twenty) per cent off on an annual basis.

### 12.7

Furthermore the vendor excludes all liability in respect of not complying with the take-over and/or performance criteria

### 13 Conflicts

#### 13.1

The agreement(s) between vendor and buyer to which these conditions apply shall be subject to Dutch law, unless agreed otherwise.

#### 13.2

All conflicts that should arise in connection with these conditions, this agreement or further agreements that should be the result thereof, if they have not been solved by the parties after consultation, shall be settled in accordance with the rules of the Dutch Arbitration Institute or, at the vendor's option, by the competent court of Amsterdam.

### 14. General

#### 14.1

The vendor and buyer shall each designate an authorised representative with power to take decisions and measures that are required for a timely and good fulfilment of the obligations by each of the parties. The authorised representative shall have full powers to carry out order changes and to make changes in any part of the offer, the procedure for the completion of the factory installation or the take-over and performance criteria, if applicable. Each of the parties may, after written notification to the other party, replace its authorised representative.

#### 14.2

All notifications on the strength of these conditions shall be made in writing and shall be either handed over in person or be despatched by telefax or by mail.

#### 14.3

None of the parties shall transfer any right or any obligation by virtue of these conditions without the other party's prior approval. In spite of the above the vendor may transfer the rights as well as the obligations on the strength of these conditions without the buyer's prior approval to an enterprise associated with him.

#### 14.4

The vendor may replace any part of the equipment by another part of similar or better quality. The buyer shall not be obliged, however, to pay any additional price for the replaced part without his approval.

#### 14.5

The act or omission by the vendor or buyer to enforce one or all rights that are due to any party shall not be considered a waiver of that right or agreement with the violation of any provision of the applicable document.

#### 14.6

If the buyer does not fulfil an obligation on the strength of the agreement or these general conditions properly or in time, the vendor shall be empowered, without any other notice of default being required, to dissolve the agreement by addressing a written statement to that effect to the buyer, without the buyer being able to claim any compensation as a result thereof and subject to the right of compensation for all damage to be suffered by the vendor as a result of the buyer's shortcoming and subject to the right of taking back all goods already delivered.

### 15.

These general conditions have been drawn up in the English and Dutch languages. The English version is a sworn translation of the Dutch original. In case of discrepancies the Dutch original shall prevail.