

## **GENERAL TERMS AND CONDITIONS BOSMA-CONTROLS BV**

### **Article 1: Applicability**

- 1.1. These Terms & Conditions apply to all tenders issued by Bosma-Controls BV (referred to as BC), to all agreements concluded by BC and to all agreements that may result there from. The counterparty is referred to as "the client".
- 1.2. In the event of any conflicts between the substance of the agreement concluded between the Client and BC on the one hand and these Terms & Conditions on the other, the provisions set out in the agreement have precedence.

### **Article 2: Tenders**

- 2.1. No obligations are attached to any tenders, insofar no term of acceptance is stated.
- 2.2. In case of composite tenders BC is not indebted to supply part of the products or services for the corresponding price mentioned in the tenders. Also do offers not automatically apply to future orders.
- 2.3. If the Client supplies BC with data, drawings etc., BC may rely on their accuracy and shall base the tender on that information.

### **Article 3: Prices**

- 3.1. All prices specified in the tender are based on delivery ex works, in accordance with the Incoterms 2000. Prices are stated exclusive of VAT, packing materials and shipment.
- 3.2. Unless expressly stated differently in the contract, all prices are according to BC's latest pricelist.
- 3.3. BC may charge any increases in cost-determining factors that arise after the agreement is concluded to the Client if the performance of the agreement has not been completed at the moment of the increase.

### **Article 4: Intellectual property rights**

Unless agreed otherwise in writing, BC retains the copyrights and all industrial property rights to all tenders, designed submitted, illustrations, drawings, trial models, programs, etc.

### **Article 5: Advice, designs and materials**

- 5.1. The Client cannot derive any rights from advice or information provided by BC that has no direct bearing on the engagement.
- 5.2. The Client is responsible for all drawings, calculations and designs made by or on behalf of the Client, and for the functional suitability of all materials prescribed by or on behalf of the Client.

- 5.3. The Client indemnifies BC for any claims from third Parties arising in connection with the use of the drawings, calculations, designs, materials, samples, models, etc. provided by or on behalf of the Client.

#### **Article 6: Delivery terms**

- 6.1. The delivery deadline and/or work period stated by BC are estimates.
- 6.2. In determining delivery deadlines and/or work periods, BC assumes that the engagement can be carried out under the circumstances as they are known to BC at that moment.
- 6.3. In the event of circumstances that are different to those known to BC when the delivery deadline and/or work period were determined, BC may extend the delivery deadline and/or work period by the time that is required in order to perform the engagement under those circumstances.
- 6.4. If the delivery deadline and/or work period agreed is exceeded, that circumstance does not in any instance entitle the Client to compensation for damages, unless agreed in writing.

#### **Article 7: Impracticability of the engagement**

- 7.1. BC is entitled to suspend the fulfillment of any obligations if any circumstances that could not be foreseen when the agreement was concluded and that are beyond BC's influence temporarily prevent the fulfillment of those obligations.
- 7.2. Circumstances that BC could not foresee and that are beyond BC's influence are understood to include (but are not limited to) the circumstance that BC's own supplier and/or subcontractors fail to meet their obligations, or fail to do so in time, the weather, strikes or work stoppages and restrictions on import or trade.

#### **Article 8: Liability**

- 8.1. BC is liable for all damages that the Client incurs that stem directly and exclusively from a shortcoming attributable to BC. However, BC's liability is limited to the amount for which BC is insured.
- 8.2. The following damages do not qualify for compensation: Trading losses, including losses caused by delays and loss of profits, damages caused by intent or gross negligence on the part of helpers or non-management employees of BC.
- 8.3. The Client indemnifies BC against all claims from third parties for product liability stemming from defects in products provided by the Client to third parties that consisted of or included products and/or materials provided by BC.

## **Article 9: Transfer of risk**

- 9.1. Deliveries are made ex works, in accordance with the Incoterms 2000; the risks attached to the object are transferred at the moment that BC makes the object available to the Client.
- 9.2. The provisions of article 9.1. notwithstanding, the Client and BC may agree that the Client will arrange transport. The risks attached to the storage, loading, transport and unloading remain with the Client in such instances. The Client may take out insurance to cover those risks.
- 9.3. In the event that objects are to be exchanged and the Client continues to use the exchangeable object while awaiting delivery of the new object, the risks attached to the exchangeable object remain with the Client until the moment that possession of the object has been relinquished to BC.

## **Article 10: Guarantees**

- 10.1. BC warrants all products it manufactures to be free from defect in materials and factory workmanship and agrees to repair or replace any product that fails to perform as specified within one year after date of install but not later than 18 months of shipment.
- 10.2 This warranty shall not apply to any product that has been:
  - repaired, worked on or altered by persons unauthorized by BC in such a manner as to injure, in BC's sole judgment, the performance, stability or reliability of the product.
  - subjected to misuse, negligence or accident.
- 10.3. If the product proves to have been defective, the object must be returned to BC carriage paid. BC will then elect either:
  - to repair the object;
  - to replace the object;
  - to credit the Client for a proportionate part of the invoice.
- 10.4. Expressed or implied, BC reserves the right to make any changes in the design or construction of its products at any time, without incurring any obligation to make any change whatever in products previously delivered.
- 10.5. In all situations, the Client must allow BC the opportunity to repair any shortcomings and/or repeat the processing.
- 10.6. The Client may only invoke guarantees after all obligations in respect of BC have been fulfilled.

## **Article 11: Complaints**

The Client may not invoke defects in the product or service unless a written complaint has been submitted to BC within fourteen days after the defect was detected or should, within reason, have been detected.

## **Article 12: Failure to take delivery**

In the event that the Client has not taken delivery of any object after

the delivery deadline has passed, those objects will remain available to the Client. Any objects of which the Client has not taken delivery will be stored for the Client's account and risk. BC may at any time invoke the powers granted by Article 6:90 of the Dutch Civil Code.

#### **Article 13: Payment**

- 13.1. Payment shall be made in the currency of BC's quotation within thirty days of date of invoice unless otherwise specified in writing.  
For counter sales: cash.
- 13.2. The payment conditions specified notwithstanding, the Client is obliged, at BC's request, to provide security for payment, to BC's satisfaction. Failure on the Client's part to provide such security for payment within the period specified will immediately constitute default. In that event, BC is entitled to dissolve the agreement and recover any damages from the Client.
- 13.3. The Client's right to offset any claims on BC is excluded, except in the event of BC's bankruptcy or if judicial debt rescheduling is applied in respect of BC.
- 13.4. The full claim for payment is payable on demand in the following instances:
- if any payment deadline has been exceeded;
  - if the Client has been declared bankrupt or requests suspension of payments;
  - if any of the Client's assets or claims are seized;
  - if the Client (if a company) is dissolved or wound up;
  - if the Client (if a natural person) makes a request for judicial debt rescheduling, is placed under guardianship or dies.
- 13.5. When payment of any of BC's invoices is overdue and BC has to take legal action against The Client for breach of payment obligation, the Client shall be responsible for all costs and disbursements incurred by BC on a full indemnity basis.

#### **Article 14: Retention of ownership and pledging**

- 14.1. After delivery, BC remains the owner of the objects delivered for as long as:
- the Client fails or will fail in the fulfillment of the obligations stemming from this agreement or similar agreements;
  - the Client fails or will fail to pay for any work performed or to be performed under such agreements;
  - the Client has not paid any claims arising from non-fulfillment of those agreements, such as compensations for damages, penalties, interest and costs.
- 14.2. As long as any objects are subject to retention of ownership, the Client may not encumber those objects in any way that exceeds the scope of the Client's ordinary activities.

- 14.3. Having invoked retention of ownership, the Supplier may retrieve the objects delivered. The Client must allow BC to enter the place where those objects are located.
- 14.4. If the Supplier cannot invoke retention of ownership because the objects delivered have been subject to confusion, deformation, the Client is obliged to give the newly formed objects in pledge to BC.

#### **Article 15: Termination**

If the Client wishes to dissolve the agreement without BC having failed in the performance thereof and if BC so agrees, the agreement will be terminated by mutual consent. In that event, BC is entitled to reimbursement for all financial losses incurred, such as damages, loss of profits and costs.

#### **Article 16: Applicable law and competent court**

- 16.1. These Terms & Conditions are governed by the laws of the Netherlands.
- 16.2. The Vienna Sales Convention (C.I.S.G.) does not apply to these Terms & Conditions, nor do any other international regulations whose exclusion is permitted.
- 16.3. Only the Dutch civil court within whose jurisdiction the Supplier's place of business is situated is competent to pass judgment on disputes, unless such is at odds with any mandatory rules of law. The Supplier is entitled to deviate from this jurisdiction clause and apply the statutory rules for jurisdiction.
- 16.4. The Parties may agree on another form of dispute settlement, such as arbitration or mediation.