

**Starkon Industrial Services B.V.**

**General Terms and Conditions**

**Article 1. Applicability**

- 1.1. These Terms and Conditions (hereinafter the “**Conditions**”) apply to all offers made by Starkon Industrial Services B.V. (hereinafter “**Starkon**”), all agreements concluded by Starkon and a contractual party (hereinafter “**Party**”) for the provision of products or services, and all agreements that may result therefrom.
- 1.2. In the event of any conflict between an agreement concluded between Starkon and a Party and these Conditions, the provisions of the agreement shall prevail.
- 1.3. Any modification or deviation from these Conditions must be agreed in writing.

**Article 2. Offers**

- 2.1. All offers are subject to Starkon’s confirmation in writing.
- 2.2. If a Party provides Starkon with data, drawings, specifications and the like, then Starkon may rely on their accuracy and completeness and may base its offer on the same.
- 2.3. Unless otherwise agreed in writing, the prices stated in the offer are based on delivery ex works at Starkon’s place of establishment, in accordance with the Incoterms 2020. Prices are exclusive of VAT and packaging.
- 2.4. If the Party does not accept Starkon’s offer, then Starkon is entitled to charge the Party for all costs incurred by Starkon in making the offer to the Party.

**Article 3. Intellectual Property Right**

- 3.1. Unless otherwise agreed in writing, Starkon retains the copyright and all industrial property rights in the offers made by it and in the designs, pictures, drawings, models (including trial models), software and the like provided by it.
- 3.2. The rights in the data referred to in paragraph 1 of this article will remain the property of Starkon irrespective of whether the costs of their production have been charged to the Party. These data may not be copied, used or shown to third parties without Starkon’s prior express written consent. The Party will owe Starkon an immediately payable penalty of € 25,000 for each breach of this provision. This penalty may be claimed in addition to damages pursuant to the law.
- 3.3. On Starkon’s first demand, the Party must return the data provided to it as referred to in paragraph 1 of this article within the time limit set by Starkon. Upon breach of this provision, the Party will owe Starkon an immediately payable penalty of € 1,000 per day. This penalty may be claimed in addition to damages pursuant to the law.

**Article 4. Advice and information**

- 4.1. The Party cannot derive any rights from advice or information it obtains from Starkon if this does not relate to an assignment.
- 4.2. If the Party provides Starkon with data, drawings and the like, Starkon may rely on their accuracy and completeness in the performance of the agreement.
- 4.3. The Party shall indemnify Starkon from and against all liability to third parties relating to use of the advice, drawings, calculations, designs, materials, samples, models and the like provided by or on behalf of the Party.

**Article 5. Delivery period**

- 5.1. The delivery/performance period shall be set by Starkon on an approximate basis.
- 5.2. In setting the delivery/performance period, Starkon is entitled to assume that it will be able to perform the assignment under the conditions known to it at that time.
- 5.3. The delivery/performance period shall only commence once an agreement has been reached on all commercial and technical details, all necessary data, final and approved drawings and the like are in Starkon’s possession, the agreed payment or instalment has been received and the necessary conditions for performance of the assignment have been satisfied.
- 5.4. In the event of circumstances that differ from those that were known to Starkon when it set the delivery/performance period, Starkon may extend the delivery/performance period by such period as Starkon needs to perform the assignment under such circumstances. If the work cannot be incorporated into Starkon’s schedule, the work shall be performed as soon as Starkon’s schedule so permits.
- 5.5. In the event of any contract addition, the delivery/performance period will be extended by such period as Starkon needs to supply the materials and parts for such work and to perform the contract addition. If the contract addition cannot be incorporated into Starkon’s schedule, the work shall be performed as soon as Starkon’s schedule so permits. If Starkon suspends its obligations, the delivery/performance period will be extended by the duration of the suspension. If the continuation of the work cannot be incorporated into Starkon’s schedule, the work shall be performed as soon as Starkon’s schedule so permits.

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- 5.6. In the event of inclement weather, the delivery/performance period shall be extended by the resulting delay.
- 5.7. The Party is required to pay all costs incurred by Starkon as a result of delay affecting the delivery/performance period as referred to in Article 5.4.
- 5.8. If the delivery period and/or performance period is/are exceeded, this will in no event entitle to damages or termination.

#### **Article 6. Transfer of risk**

- 6.1. Unless otherwise agreed in writing, delivery shall be made ex works at Starkon's place of establishment, in accordance with the Incoterms 2020. The risk attached to the goods passes to the Party at the time Starkon makes the goods available to the Party.
- 6.2. Notwithstanding the provisions in paragraph 1 of this article, the Party and Starkon may agree that Starkon shall arrange for transport. In that event, the risk of storage, loading, transport and unloading will notwithstanding be borne by the Party. The Party shall insure itself against these risks.
- 6.3. In the event of a purchase in which a good is exchanged for another and the Party retains the good to be exchanged pending delivery of the new good, the risk attached to the good to be exchanged remains with the Party until it has placed this good in the possession of Starkon. If the Party cannot deliver the good to be exchanged in the condition that it was in when the agreement was concluded, Starkon is entitled to terminate the agreement without liability.

#### **Article 7. Price change**

- 7.1. Starkon may pass on to the Party any increase in costing factors occurring after conclusion of the agreement.
- 7.2. The Party shall be obliged to pay the price increase as referred to in paragraph 1 of this article on any of the occasions below, such as at the discretion of Starkon:
  - a. upon the occurrence of the price increase;
  - b. at the same time as payment of the principal sum;
  - c. on the next agreed payment deadline.

#### **Article 8. Force majeure**

- 8.1. Starkon is entitled to suspend performance of its obligations if it is temporarily prevented from performing its contractual obligations to the Party due to force majeure.
- 8.2. Force majeure is understood to mean, inter alia, the circumstance of failure by suppliers, Starkon's subcontractors or transport companies engaged by Starkon to perform their obligations or perform them in good time, weather conditions, earthquakes, fire, power failure, loss, theft or destruction of tools or materials, road blocks, strikes or work stoppages and import or trade restrictions.
- 8.3. If Starkon's temporary inability to perform has lasted or is expected by Starkon to last for more than six months, the Party and Starkon shall each be entitled to terminate the agreement with immediate effect, but only as regards such part of the obligations that has not yet been performed. The termination shall result in no liability for Starkon.
- 8.4. In the event of force majeure where performance is or becomes permanently impossible, both parties are entitled to terminate the agreement with immediate effect as regards such part of the obligations that has not yet been performed.
- 8.5. The parties shall not be entitled to compensation for damage suffered or to be suffered as a result of suspension or termination as referred to in this article.

#### **Article 9. Scope of the work**

- 9.1. The Party must ensure that all licences, exemptions and other administrative decisions necessary to carry out the work are obtained in good time. The Party is required upon Starkon's first demand to send Starkon a copy of the documents mentioned above.
- 9.2. Unless otherwise agreed, the price of the work shall not include:
  - a. the costs of earthwork, pile driving, cutting, breaking, foundation work, cementing, carpentry, plastering, painting, wallpapering, repair work or other construction work;
  - b. the costs of connecting gas, water, electricity or other infrastructural facilities;
  - c. the costs of preventing or limiting damage to any goods present on or near the work site;
  - d. the costs of removal of materials, building materials or waste;
  - e. travel and accommodation expenses.

#### **Article 10. Changes to the work**

- 10.1. Changes to the work shall in any event result in contract variations work if:
  - a. the design, specifications or contract documents are changed;
  - b. the information provided by the Party is not factually accurate;
  - c. quantities diverge by more than 10% from the estimates.

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- 10.2. Contract additions will be charged on the basis of the pricing factors applicable at the time the contract addition is performed. Contract deductions will be charged on the basis of the pricing factors applicable at the time the agreement was concluded.
- 10.3. The Party shall be obliged to pay the price of the contract addition as referred to in paragraph 1 of this article on any of the occasions below, such at the discretion of Starkon:
- when the contract addition arises;
  - at the same time as payment of the principal sum;
  - on the next agreed payment deadline.
- 10.4. If the sum of the contract deduction exceeds that of the contract addition, in the final settlement Starkon may charge the Party 10% of the difference. This provision does not apply to contract deductions that result from a request by Starkon.

#### **Article 11. Performance of the work**

- 11.1. The Party shall ensure that Starkon can carry out its activities without interruption and at the agreed time, and that the requisite facilities are made available to Starkon when carrying out its activities, such as:
- gas, water and electricity;
  - heating;
  - lockable and dry storage space;
  - facilities required pursuant to the Working Conditions Act and Working Conditions Regulations and any such similar or related, applicable mandatory legislation in the place of performance.
- 11.2. The Party bears the risk of and is liable for any damage connected with loss, theft, burning and damage to goods belonging to Starkon, the Party and third parties, such as but not limited to tools, materials intended for the work or material used in the work, that are located on the work site or at another agreed location.
- 11.3. The Party is obliged to adequately insure itself against the risks referred to in paragraph 2 of this article. In addition, the Party must procure insurance of work-related damage as regards the material to be used. Upon Starkon's first demand, the Party must send it a copy of the relevant insurance policy/policies and proof of payment of the premium. In the event of any damage, the Party is required to report this to its insurer without delay for further processing and settlement.
- 11.4. If the Party fails to perform its obligations as described in the previous paragraphs and this results in delayed performance of the activities, the activities will be carried out as soon as the Party performs its obligations as yet and Starkon's schedule so permits. The Party is liable for all damage suffered by Starkon as a result of the delay.

#### **Article 11. Completion of the work**

- 12.1. Unless otherwise, agreed, the work is deemed to be completed in the following events:
- when the Party has approved the work;
  - when the work is been taken into commission by the Party. If the Party takes part of the work into commission, that part will be deemed to be completed;
  - if Starkon notifies the Party in writing that the work has been completed and the Party does not inform it in writing as to whether or not the work is approved within 14 days of such notification having been made;
  - if the Party does not approve the work due to minor defects or missing parts that can be rectified or subsequently delivered within 30 days and that do not prevent the work from being taken into commission.
- 12.2. If the Party does not approve the work, it is required to inform Starkon of this in writing, stating the reasons and where possible providing documentations. The Party must provide Starkon with the opportunity to complete the work.
- 12.3. The Party shall indemnify Starkon from and against any claims by third parties for damage to non-completed parts of the work caused by the use of parts of the work that have already been completed.

#### **Article 13. Liability**

- 13.1. In the event of an attributable failure, Starkon is obliged to perform its contractual obligations.
- 13.2. Starkon's obligation to pay damages, irrespective of the legal basis, is limited to damage for which Starkon is insured under any relevant insurance policy taken out by it or on its behalf, however limited to the amount paid out under this insurance in the relevant case.
- 13.3. If, for any reason whatsoever, Starkon cannot invoke the limitation in paragraph 2 of this article, the obligation to pay damages will be limited to a maximum of 15% of the total assignment amount (excluding VAT). If the agreement comprises parts or partial deliveries, the obligation to pay damages is limited to a maximum of 15% (excluding VAT) of the assignment amount of that part or that partial delivery.
- 13.4. The following does not qualify for compensation:
- consequential loss, including business interruption loss, production loss, loss of profit, transport costs and travel and accommodation expenses. The Party may insure itself against this damage if possible;

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- b. damage to goods in or under the Party's care, custody or control. Such damage includes damage caused as a result of or during the performance of the work to goods on which work is being performed or to goods situated in the vicinity of the work site. The Party may insure itself against such damage if it so desires;
  - c. damage caused by the intent or wilful recklessness of agents or non-management employees of Starkon.
- 13.5. Starkon is not liable for damage to material provided by or on behalf of the Party where that damage is the result of improper processing.
- 13.6. The Party shall indemnify Starkon from and against all claims by third parties on account of product liability as a result of a defect in a product supplied by the Party to a third party, where that consisted, entirely or partially, of products and/or materials supplied by Starkon. The Party is obliged to compensate all damage suffered by Starkon in this respect, including the full costs of defence.

#### **Article 14. Warranty and other claims**

- 14.1. Unless otherwise agreed in writing, Starkon warrants the proper execution of the agreed performance for a period of six months after delivery/completion. In the event that a different warranty period is agreed, the other paragraphs of this article are also applicable.
- 14.2. If the agreed performance was not properly executed, Starkon will decide whether to properly execute it or to credit the Party for a proportionate part of the invoice amount. If Starkon chooses to properly execute the performance, it shall determine the manner and time of execution itself. If the agreed performance consisted (entirely or partially) of the processing of material provided by the Party, the Party must provide new material at its own risk and expense.
- 14.3. Parts or materials that are repaired or replaced by Starkon must be sent to Starkon by the Party.
- 14.4. The Party shall bear the expense of:
- a. all costs of transport or dispatch;
  - b. costs of disassembly and assembly;
  - c. travel and accommodation expenses.
- 14.5. The Party must in all cases offer Starkon the opportunity to remedy any defect or to perform the processing again.
- 14.6. The Party may only invoke the warranty once it has satisfied all its obligations to Starkon.
- 14.7. No warranty is given if the defects result from:
- normal wear and tear;
  - improper use;
  - lack of maintenance or improper maintenance;
  - installation, fitting, modification or repair by the Party or third parties;
  - defects in or unsuitability of goods originating from, or prescribed by, the Party;
  - defects in or unsuitability of materials or auxiliary materials used by the Party.
- 14.7. No warranty is given in respect of:
- goods supplied that were not new at the time of delivery;
  - the inspection and repair of goods of the Party;
  - parts for which a manufacturer's warranty has been provided.
- 14.8. The provisions of paragraphs 2 to 7 of this article apply mutatis mutandis to any claims by the Party based on breach of contract, non-conformity or on any other basis whatsoever.
- 14.9. The Party cannot assign any rights under this article.

#### **Article 15. Obligation to complain**

- 15.1. The Party shall not be entitled to invoke a defect in performance if the Party does not notify Starkon in writing hereof within fourteen days of the completion of the work, or the date it discovered the defect or should reasonably have discovered the defect.
- 15.2. On pain of forfeiture of all rights, the Party must submit complaints regarding the amount invoiced to Starkon in writing within the payment deadline. If the payment deadline is longer than thirty days, the Party must complain no later than thirty days after the date of the invoice.

#### **Article 16. Failure to take delivery of goods**

- 16.1. Upon expiry of the delivery/performance period, the Party is obliged to take delivery of the good or goods forming the subject of the agreement.
- 16.2. The Party must lend all cooperation that can be reasonably expected from it to enable Starkon to make the delivery.
- 16.3. If the Party does not take delivery of goods, such goods will be stored at the risk and expense of the Party.
- 16.4. Upon breach of the provisions in paragraphs 1 and/or 2 of this article, the Party will owe Starkon a penalty of € 250 per day, to a maximum of € 25,000. This penalty may be claimed in addition to damages pursuant to the law.

#### **Article 17. Payment**

- 17.1. Payment will be made at Starkon's place of establishment or to an account to be designated by Starkon.

17.2. Unless agreed otherwise, payment will be made as follows:

- a. ~~In cash where sale is at the service desk;~~
- b. in the case of payments in instalments:
  - 40% of the total price upon assignment;
  - 50% of the total price after supply of the material or, if delivery of the material is not included in the assignment, after commencement of the work;
  - 10% of the total price upon completion;
- c. in all other cases, within thirty days of the date of the invoice.

17.3. The right of the Party to set off or suspend amounts it is owed by Starkon is excluded, save exclusively in the event of Starkon's bankruptcy or if statutory debt rescheduling applies to Starkon.

17.4. Irrespective of whether Starkon has fully executed the agreed performance, everything that is or will be owed to it by the Party under the agreement is immediately due and payable if:

- a. the deadline for payment has been exceeded;
- b. an application has been made for the Party's bankruptcy or suspension of payments;
- c. an attachment is levied on the Party's goods or claims;
- d. the Party (a company) is dissolved or wound up.
- e. the Party (a natural person) requests to be admitted to statutory debt rescheduling, is placed under guardianship or dies.

17.5. If payment is not made within the agreed payment deadline, the Party will immediately owe interest to Starkon. The interest rate is 12% per annum, however equal to the statutory commercial interest rate if the latter rate is higher. When calculating interest, part of a month is regarded as a whole month.

17.6. Starkon is authorised to set off its debts to the Party with amounts owed by the Party to companies affiliated with Starkon. In addition, Starkon is authorised to set off amounts owed to it by the Party with debts to the Party of companies affiliated with Starkon. Further, Starkon is authorised to set off its debts to the Party with amounts owed to Starkon by companies affiliated with the Party. Affiliated companies are understood to mean the companies belonging to the same group, within the meaning of Article 2:24b Dutch Civil Code, and participating interests within the meaning of Article 2:24c Dutch Civil Code.

17.7. If payment is not made within the agreed payment deadline, the Party will owe Starkon all extrajudicial costs, with a minimum of € 75. These costs will be calculated on the basis of the following table (principal sum plus interest):

- 15% on the first € 3,000;
- 10% on any additional amount up to € 6,000;
- 8% on any additional amount up to € 15,000;
- 5% on any additional amount up to € 60,000;
- 3% on any additional amount from € 60,000.

The extrajudicial costs actually incurred will be owed if these are higher than they would be according to the above calculation.

17.8. If a judgment is rendered in favour of Starkon in legal proceedings, all costs that it has incurred in relation to these proceedings shall be borne by the Party.

#### Article 18. Security

18.1. Irrespective of the agreed payment conditions, upon the first demand of Starkon, the Party is obliged to provide such security for payment as Starkon deems sufficient. If the Party does not comply with such demand within the period set, the Party shall immediately be in default without need for prior notice by Starkon. In that event, Starkon is entitled to terminate the agreement with immediate effect without liability towards the Party, and shall be entitled to recover its damages from the Party.

18.2. Starkon shall retain ownership of any goods delivered as long as the Party:

- a. fails or will fail in the performance of its obligations under this agreement or other agreements;
- b. has not paid debts that have arisen due to non-performance of the aforementioned agreements, such as damage, penalties, interest and costs.

18.3. As long the goods delivered are subject to retention of title, the Party may not encumber or alienate the same other than in the ordinary course of its business.

18.4. Once Starkon has invoked its retention of title, it may take possession of the goods delivered. The Party shall lend its full cooperation to this end.

18.5. Starkon has a right of pledge and a right of retention in respect of all goods that are or will be held by it for any reason whatsoever and for all claims it has or might acquire against the Party in respect of anyone seeking their surrender.

18.6. If, after the goods have been delivered to the Party by Starkon in accordance with the agreement, the Party has met its obligations, the retention of title shall be revived with regard to such goods if the Party does not meet its obligations under any agreement subsequently concluded.

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**Article 19. Termination of the Agreement**

19.1. If the Party wishes to terminate the agreement without Starkon being in default, and Starkon agrees to this, the agreement shall be terminated by mutual consent. In that case, Starkon is entitled to compensation for all financial loss, such as loss suffered, loss of profit and costs incurred.

**Article 20. Applicable law and competent court**

20.1. Unless otherwise agreed in writing, any offer by Starkon, any agreement concluded with Starkon, including any agreements arising thereof, and these Conditions shall be subject to Dutch law.

20.2. The Vienna Sales Convention (C.I.S.G.) and any other international regulation the exclusion of which is permitted, shall not apply to any contracts for the sale of goods concluded with Starkon.

20.3. Any disputes regarding the interpretation or performance of any agreement concluded with Starkon, or any dispute regarding the interpretation and applicability of these Conditions shall be submitted exclusively to the District Court of Rotterdam, unless this is contrary to mandatory law.