

General Terms and Conditions of Sale and Delivery of Federatie Aandrijven en Automatiseren (Trading Companies)

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Issued by FEDA
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Art. I General

1. Where these General Terms and Conditions form part of offers and agreements related to carrying out supplies and/or providing services by the contractor, all provisions of these terms and conditions shall apply between the parties, unless expressly specified otherwise in writing by both parties. Any reference by the client to his own purchase, tender or other terms and conditions are not accepted by the contractor.

2. In these conditions, the following words and phrases will have the following meanings:

- product: goods and services, such as maintenance, advice and inspection;
- in writing: by means of a document signed by both parties or by letter, fax or e-mail message or any other technical means agreed by the parties;
- the contractor: the person who refers to these terms and conditions in his offer and/or order confirmation;
- the client: the person to whom the offer and/or order confirmation is addressed;

In these conditions, the following word will include the following meaning:

- service: the contracting of work.

3. If reference is made in a provision to "these terms and conditions", these also include the additional Feda terms and conditions regarding the manufacturing, assembly and installation and system integrators.

Art. II Offer

1. Any offer made by the contractor is subject to contract.
2. Any offer is based on execution of the contract by the contractor under normal conditions and during normal working hours.

Art. III Contract

1. If the contract is entered into in writing, it is concluded on the day the contract is signed by the contractor or on the day of written order confirmation of the contractor.
2. Anything delivered and/or installed by the contractor in consultation with the client during the execution of the contract, whether recorded in writing or not, in excess of the quantities expressly set out in the contract or the order confirmation or anything performed by him in excess of the work expressly set out in the contract or order confirmation will be regarded as additional work.
3. Verbal promises and agreements with employees of the contractor will only be binding on the contractor after and in as far as he has confirmed them in writing.

Art. IV Price

1. The prices quoted by the contractor are exclusive of turnover tax and other government charges related to the sale and delivery and are based on delivery ex works according to Incoterms applicable on the date of the offer, unless otherwise stipulated in these terms and conditions. Ex works means that delivery takes place at the premises of the contractor.
2. If after the date of conclusion of the contract one or more cost price factors are raised - even if this occurs due to foreseeable circumstances -, the contractor is entitled to raise the agreed price accordingly.
3. The contract shall include the right of the contractor to invoice any additional work that he carried out separately, as soon as he knows the amount to be charged for it. The rules set out in paragraphs 1 and 2 of this article apply by analogy to the calculation of additional work.
4. Any packaging is not included in the price and will be invoice separately. Packaging is not taken back.

Art. V Drawings, calculations, descriptions, designs, tools, etc.

1. Data mentioned in catalogues, illustrations, drawings, specifications of measurements and weights and the like are only binding if and when expressly included in a contract signed by the parties or an order confirmation signed by the contractor.
2. The offer made by the contractor, as well as the drawings, illustrations, calculations, descriptions, software, designs, tools, etc. that it prepares or provides remain the property of the contractor, even when fees have been charged for them. The intellectual property rights to the information implied in them or that are the basis of the manufacturing and construction methods, products, etc. remain exclusively vested in the contractor, even when a fee has been charged for them. The client guarantees that except when in the performance of the contract, the information referred to above will only be copied, modified, shown to third parties, disclosed or used subject to the written permission of the contractor.

Art. VI Delivery time

1. The delivery period starts on the following dates, whichever is the latest:
 - a. the date of conclusion of the contract;
 - b. the date of receipt by the contractor of the documents, data, permits, etc. that are necessary for the execution of the contracted work;
 - c. the date of satisfying the formalities that are necessary to start with the work;
 - d. the date of receipt by the contractor of the amount that in accordance with the contract must be paid in advance prior to commencement of the work.

If a delivery date or week has been agreed to, the delivery period consists of the period between the date of conclusion of the contract and the delivery date or week.

2. The delivery period given is approximate only and is based on the working conditions valid on the date of conclusion of the contract and the timely delivery of the materials ordered by the contractor that are necessary for the execution of the work. If through no fault of the contractor a delay occurs as a result of a modification to the working conditions referred to above or because the materials ordered that are necessary for the execution of the work are not delivered in time, the delivery period will be extended insofar as necessary.
3. With regard to the delivery period, the product will be deemed to have been delivered when it is ready for inspection, in case an inspection at the company of the contractor has been agreed, and in the other cases when it is ready for shipment, after the client has been informed thereof in writing and subject to the obligation of the contractor to comply with his assembly / installation obligations, if any.
4. Without prejudice to the provisions elsewhere in these conditions in respect of an extension of the delivery period, the delivery period will be extended with the duration of the delay that the contractor experiences as a result of the client's failure to comply with any of its obligations arising from the contract or to give the assistance it is required to give in respect of the execution of the contract.
5. If the delivery time is exceeded, this does not entitle the client to terminate the contract wholly or in part, unless the period is exceeded with more than 16 weeks or it will last longer than 16 weeks in accordance to notice given by the contractor. In case the delivery period is exceeded as referred to above, the client may terminate the agreement by written notice to the contractor and in that case, he will be entitled, if applicable, to restitution of the (part of the) price already paid for the product and to compensation of the damage that he suffered, up to a maximum of 15 percent of the agreed price for the delivered product. If the delivery period is only exceeded for a part of the product, the compensation will be calculated on the basis of the part of the purchase price that relates to the part of the product that is not delivered. Unless the client exercises the right referred to above to terminate the contract, exceeding the delivery period - for any reason whatsoever - does not entitle the client to carry out or cause to carry out works in performance of the contract without authorization from the court.

Art. VII Inspection

1. The client shall inspect the product at the latest within 14 days after the delivery referred to in article VI, paragraph 3 or - if assembly/installation has been agreed on - at the latest within 14 days after the assembly/installation. If this period has expired without written and specified notice of well-founded complaints or if the product is put into use for commercial production before this period ends, the product is deemed to have been accepted.
2. In case of insignificant defects, especially those that hardly affect the anticipated use of the product, if at all, the product will be deemed to have been accepted regardless these defects. The contractor shall remedy such defects as soon as possible.
3. Without prejudice to the obligation of the contractor to comply with his warranty obligations, the acceptance in accordance with the provisions on inspection and acceptance test shall exclude any claim of the client with regard to a failure in the performance of the contractor.

Art. VIII Risk transfer and transmission of ownership

1. Immediately following the delivery of the product in the sense of art. VI, paragraph 3, the client bears the risk for all direct and indirect damage that might occur to or be caused by this product, except if and when the damage is due to intent or wilful recklessness of employees forming part of the management of the company of the contractor. If after notice of default the client fails to purchase the product, the contractor is entitled to charge the client for the costs arising from this failure. Compliance with national export laws and regulations is at the expense and risk of the client and is not a valid reason to fail to purchase.
2. Without prejudice to the provisions of the previous paragraph and those of art. VI, paragraph 3, the ownership of the products is transferred to the client when everything the client owes the contractor on account of supplies or works, including interest and costs, has been paid to the contractor in full.
3. In case of invoking paragraph 2, the contractor will be entitled to unhindered access to the product. The client shall fully cooperate with the contractor in order to give the contractor the opportunity to exercise the retention of title included in paragraph 2 by repossessing the product, including any disassembly required to that effect.
4. Without prejudice to the provisions set out in the preceding paragraphs, the client undertakes to cooperate on demand of the contractor in the creation of a non-possessory pledge on products that as a result of payment have been transferred to the client or on products in which the products delivered have been included and/or of which they have become a part.
5. The contractor has a right of retention in respect of all products of the client that are held by the contractor, whether or not on behalf of the client, until the client has complied with all his obligations towards the contractor.

Art. IX Payment

1. Unless otherwise agreed, the agreed price shall be paid within 30 days after the invoice date.
2. Payment of additional work shall be made as soon as this has been charged to the client.
3. All payments shall be made without any deduction or setoff at the offices of the contractor or into an account to be designated by him.
4. The contractor reserves the right to make partial deliveries, which will be invoiced separately.
5. If the client does not pay within the agreed terms, he is deemed to be in default by operation of law, and the contractor is entitled, without any further notice of default being required, to charge the client interest as of the due date at an interest rate that is 3 points higher than the legal interest in force in the Netherlands, as referred to in art. 6:119a art. 6:120 paragraph 2 of the Netherlands Civil Code, and furthermore to charge him for all court and other costs related to the collection of the debt.

Art. X Warranty

1. Without prejudice to the restrictions set out below, the contractor guarantees both the reliability of the products he delivers (not being a service) and the quality of the materials used and/or delivered for them, in as far as defects to a delivered product are concerned that were not visible during inspection or acceptance tests and in respect of which the client proves that they have occurred within 12 months after the delivery in accordance with article VI paragraph 3 exclusively or preponderantly as a direct result of an error in the construction used by the contractor or as a result of faulty workmanship or use of poor materials. The period of 12 months is based on operation which does not exceed 8 hours per day during 5 days per week. If the daily use of the product exceeds the agreed use, this period will be reduced accordingly.
2. Any defect covered by the warranty will be removed by the contractor by means of repair or replacement of the faulty part, whether or not at the company of the client, or by sending a replacement part, this at the sole discretion of the contractor. All costs that exceed the sole obligation as described in the preceding sentence, including, but not limited to transport costs and travel and accommodation expenses as well as costs of disassembly and assembly/installation, are at the expense of the client. A new warranty period of 12 months will apply to repaired or replaced parts, on the understanding that any warranty expires as soon as 24 months after delivery of the product in accordance with article VI paragraph 3 have passed.
3. Inspection, advice and similar services provided by the contractor are not warranted.
4. The warranty does not cover defects that occur in or are wholly or in part caused by:
 - a. noncompliance with the operating and maintenance instructions or any use other than the anticipated normal use;
 - b. normal wear;
 - c. assembly/installation or repair by the client or third parties;
 - d. the applicability of any government regulation regarding the nature or quality of the materials used;
 - e. materials or goods used in consultation with the client;
 - f. materials or goods provided by the client to the contractor for processing;
 - g. materials, goods, working methods and constructions, in as far as used on the express instruction of the client, as well as the materials and goods supplied by or on behalf of the client;
 - h. parts purchased by the contractor from third parties, in as far as the third party has not issued a warranty to the contractor or the warranty issued by the third party has expired;
 - i. the connection of the products delivered to piping or wiring that does not comply with the standards required by the contractor;
 - j. the use of unsuitable and/or contaminated types of oil/lubricants, the use of contaminated and wet compressed air, dirt in the product, or use of the product in an aggressive or otherwise unsuitable environment.
5. If the client does not comply with any obligation arising from the contract or any contract related thereto between the client and the contractor, or fails to do so in a prompt or proper manner, the contractor does not have any warranty obligations whatsoever in respect of any of these contracts, regardless of how such warranty is called. If the client proceeds or causes to proceed to the disassembly, repair or alteration of the product or other works to the product, any claim under the warranty will lapse.
6. Complaints with regard to defects shall be submitted in writing as soon as possible after having discovered them, within the warranty period. In case of discovery on the last day of the warranty period, the complaint shall be submitted in writing at the latest within 14 days after expiry of the warranty period. When these terms are exceeded, any claim against the contractor for those defects shall lapse. Legal actions must be filed within one (1) year of the complaint being made in good time, at the risk of such a claim lapsing.
7. If the contractor replaces parts/products in the fulfilment of its obligations under the warranty, the replaced parts/products become the property of the contractor.
8. The alleged failure of the contractor to comply with his warranty obligations does not discharge the client from the obligations that arise for him from the contract concluded with the contractor.

Article XI Liability

1. The liability of the contractor is limited to compliance with the warranty obligations described in article X of these terms and conditions. If the contractor has not complied with his obligations arising from article X. within a reasonable period of time, the client may set a last, appropriate period for compliance by the contractor with these obligations. If the contractor fails to comply with his obligations within this last period, the client may carry out the necessary repairs or have a third party carry out the necessary repairs at the expense of the contractor. If repairs are carried out by the client or by a third parties, the contractor will be discharged from all liability for the defect in question after payment of the reasonable costs incurred by the client, provided that these costs will amount to 15 percent at most of the agreed price for the product delivered.

2. If the repairs referred to in paragraph 1 are not carried out successfully, the client shall notify the contractor hereof in writing without delay. After this notification:

- a. the client is entitled to a discount on the agreed price for the product delivered in proportion to the decrease in value of the product, on the understanding that this discount will be 15 percent at most of the agreed price of the product delivered, or
- b. if the defect is of such a serious nature that it substantially deprives the client of the benefits of the contract, the client may terminate the contract by giving written notice to the contractor. In that case, the contractor is entitled to restitution of the price paid for the product delivered and to a compensation of the damage that he has suffered, up to a maximum of 15 percent of the agreed price for the product delivered.

Within 1 year after a complaint being made in good time, the client shall invoke the rights mentioned in paragraph 2 a and b at the risk of forfeiting all rights.

3. Unless intent or wilful recklessness exists on the part of employees forming part of the management of the contractor and subject to the provisions in art. VI, paragraph 5 and in paragraphs 1 and 2 of this article, any liability of the contractor for defects in the product delivered and in connection with the delivery, such as for damage for exceeding the delivery period and the failure to deliver, for damage as a result of liability towards third parties, for loss of profits and consequential damage, and for damage caused by any wrongful act or omission of (the employees of) the contractor is excluded.

4. Consequently, the contractor is not liable for:

- infringement of patents, licences or other rights of third parties;
- damage to or loss of, for any reason whatsoever, the raw materials, semi-finished goods, models, tools and other goods made available by the client.

5. If the contractor provides assistance - any nature whatsoever - during the assembly/installation without having contracted the assembly/installation, this is done at the risk of the client.

6. The client is obliged to indemnify the contractor against all claims of third parties for compensation.

Art. XII Force majeure

In these General Terms and Conditions of Delivery, force majeure means any circumstance beyond the control of the contractor - even if such circumstance was already foreseeable on conclusion of the contract -, that permanently or temporarily prevents performance of the contract as well as, in as far as not included in these circumstances, war, threat of war, terrorism, civil war, riots, strikes, lock-outs, troubles with transport, fire and any other serious breakdowns in the company of the contractor or that of his suppliers.

Art. XIII Suspension and termination

1. If the contractor is unable to perform the contract as a result of force majeure, he is entitled, without any court intervention, to suspend the contract for six months at most or to terminate the contract wholly or in part, without being obliged to pay any compensation.

During the suspension, the contractor is authorized and at the end of it is obliged to opt for execution, if possible, or termination of the contract or a part thereof.

2. Both in the event of suspension and in the event of termination pursuant to paragraph 1, the contractor is entitled to demand immediate payment of the raw materials, materials, parts and other goods purchased, reserved, processed and manufactured by him, at the value that must be assigned to them in all reasonableness. In the event of termination pursuant to paragraph 1, after payment of the amount due pursuant to the preceding sentence, the client is obliged to take possession of the goods included in that amount, in default whereof the contractor is authorized to have these goods stored at the expense and risk of the client or to destroy them at the expense or risk of the latter.

3. If there are good grounds for fearing that the client is not or will not be able or willing to comply with his contractual obligations towards the client, as well as in the case of bankruptcy, suspension on payments, closing down, liquidation or transfer of the business of the client or a part thereof, the contractor is entitled to require appropriate security with regard to the contractual obligations of the client (whether due or not) and to suspend performance of the contract pending such security. In the event of failure to provide security within a reasonable period of time established by the contractor, the contractor is entitled to terminate the contract wholly or in part. The contractor has these rights in addition to his other rights pursuant to the law, the contract and these terms and conditions.

4. If the client does not comply with any obligation arising from the contract or any contract related thereto between the client and the contractor, or fails to do so in a prompt or proper manner, the contractor is also entitled to suspend performance of the contract and/or to terminate the contract.

5. In the event of suspension pursuant to paragraphs 3 or 4, the contractor is entitled to have the raw materials, materials, parts and other goods purchased, reserved, processed and manufactured by him stored at the expense and risk of the client. In the event of termination pursuant to paragraphs 3 or 4, the preceding sentence applies by analogy, on the understanding that instead of having them stored, the contractor may also choose to sell or destroy them at the expense of the client. In the event of suspension or termination pursuant to paragraphs 3 or 4, the contractor is entitled to full compensation, without being liable to pay any compensation.

Art. XIV Disputes

Any dispute that may arise by reason of a contract to which these terms and conditions apply wholly or in part or by reason of any further contracts arising therefrom will be settled by the competent Dutch court. If the law does not provide for the competence of a Dutch court, the court of the district of the contractor will have competence.

Art. XV Applicable law

Only Dutch law, valid for the European territory of the Kingdom of the Netherlands, applies to contracts to which these conditions apply wholly or in part. The applicability of the Vienna Sales Convention is explicitly excluded.

Additional General Terms and Conditions of Sale and Delivery of Federatie Aandrijven en Automatiseren in case of manufacturing, assembly and installation

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In addition to the General Terms and Conditions of Sale and Delivery of Federatie Aandrijven en Automatiseren (hereinafter referred to as: Feda terms and conditions for trading companies), the following applies in the event of manufacturing, assembly and installation by the contractor:



Art. XVI Price

1. The supply of piping or wiring as well as the provision of piping or wiring diagrams is not included in the offer.
2. Unless otherwise agreed, cost estimates and plans will not be charged separately. If the contractor has to make new drawings, calculations, descriptions, designs or tools and the like in the case of repeat orders, a fee will be charged for them.
3. The costs of loading and unloading and transport of the raw materials, semi-finished products, designs, tools and other goods made available by the client are not included in the price and will be charged separately. Costs paid by the contractor in this respect will be deemed as prepayment chargeable to the client.
4. If the contractor has contracted to assemble the product, the price has been calculated including assembly and operational delivery of the product at the place mentioned in the offer and including all costs, except the costs that are not included in the price according to the preceding paragraphs or that are mentioned in art. XVII of these terms and conditions. Costs incurred on account of unworkable weather will be passed on.

Art. XVII Assembly/installation

1. If the parties have agreed that the contractor will see to the assembly/installation of the product to be delivered, the client is liable towards the contractor for the correct and timely execution of all layout, facilities and/or conditions that are necessary for the placement of the product to be assembled/installed and/or the correct functioning of the product in assembled/installed state. This does not apply if and in as far as the execution by or on instruction of the contractor is carried out according to drawings and/or data provided by or on instruction of the latter.
2. Without prejudice to the provisions set out in paragraph 1, if the parties have agreed that the contractor will see to the assembly/ installation, the client will in any case make sure at his own risk and expense:
 - a. that the employees of the client can start their work as soon as they arrive at the site where the product is to be placed and continue to do their work during normal working hours and, if the contractor considers this to be necessary, outside normal working hours, provided that he has notified the client hereof in time;
 - b. that suitable accommodation and/or all facilities required by government regulations, contract and custom are available to the employees of the contractor;
 - c. that the access roads to the site where the product is to be placed are suitable for the required transport;
 - d. that the site designated for placement is suitable for storage and assembly;
 - e. that the necessary lockable storage depots for materials, tools and other goods are available;
 - f. that the necessary and customary supporting workmen, auxiliary equipment (such as scaffolding, hoists, elevating cranes, ladders, electric and autogenic welders, with the exception of the usual hand tools), auxiliary materials (including fuels, oils and greases, cleaning and other small materials, gas, water, electricity, steam, compressed air, heating, lighting, etc.) and the measuring and test equipment common to the business of the client will be available to the contractor at the right place, free of charge and in time;
 - g. that all necessary safety measures and precautions have been taken and are maintained, as well as all measures to satisfy the government regulations applicable within the context of the assembly/installation.
 - h. that on commencement of and during assembly, the products delivered are available in the right place;
 - i. that the place of installation is in accordance with the other installation instructions of the contractor.
3. Damages and costs that arise as a result of the failure to satisfy the conditions laid down in this article or to satisfy them in time are at the expense of the client.
4. The assembly does not include:
 - a. the supervision of the filling of the product delivered with the medium intended for the installation of the client;
 - b. the instruction, which in the opinion of the contractor is necessary,

on the operation of the product to the employees of the client who will be responsible for the operation, to be given on the days to be determined by the contractor.

- c. the placement and/or connection of the product to be delivered to the installation of the client;
 - d. the supply and mounting of electric wiring;
 - e. excavation, hacking, breaking, brickwork, concrete work, carpentry, plastering painting or other similar activities;
 - f. the application of paint or other exterior protective layer to the piping;
 - g. the supply of the medium intended for the product and the filling of the product with such medium;
 - h. the execution of cleaning activities in connection with the occurrence of leaks in the installation.
5. For work executed outside normal working hours at the request of the client, a surcharge will be charged in accordance with the rates applicable within the company of the contractor.
 6. With regard to the assembly/installation time, article VI of the Feda terms and conditions for trading companies applies by analogy.
 7. The client is responsible for the competent and correct use and application within his organization of the products, as well as for the administration and calculation methods to be used.

Art. XVIII Acceptance test

1. If acceptance tests have been agreed, following the delivery as referred to in article VI paragraph 3 of the Feda terms and conditions for trading companies, or in the event assembly/installation has been agreed on following the assembly/installation, the client shall provide the contractor with the opportunity to execute the necessary preparatory tests and to make such improvements and changes that the contractor deems necessary. Immediately following the request of the contractor to this end, the acceptance tests will be carried out in the presence of the client. If the acceptance tests have been carried out without specified and founded complaints, and also if the client does not comply with his obligations mentioned above, the product is deemed to have been accepted.
2. The client will make the facilities available to the contractor, including those referred to in art. XVII paragraph 2, subparagraph f, as well as representative samples of any materials to be processed that are required for the acceptance test and for any other test, to a sufficient extent, in time and free of charge at the right place, so that the parties may imitate the anticipated operating conditions of the product as closely as possible. If the client does not comply with this, the preceding provision, last sentence will apply.

Art. XIX Warranty

1. Art. X paragraph 1 of the Feda terms and conditions for trading companies applies by analogy to defects that are not visible on inspection or during an acceptance test and that are caused exclusively or preponderantly by the faulty assembly/installation by the contractor. If the product is assembled/installed by the contractor, the warranty period of 12 months referred to in art. X paragraph 1 will become effective on the date that the assembly/installation by the contractor has been completed, on the understanding that in that case, the warranty period in any case ends 19 months after delivery in accordance with article VI, paragraph 3.
2. A new warranty period of 12 months will apply to repaired or replaced parts, provided that any warranty expires as soon as, in case of the applicability of paragraph 1, 30 months after the delivery mentioned above have passed.
3. Unless otherwise agreed, in the event of repairs, revisions and maintenance work and similar services carried out by the contractor outside the warranty, only the reliability of the execution of the assigned work is warranted, for a period of 12 months. This warranty only consist of the obligation of the contractor, in the event of faultiness, to carry out the work again in as far as it is faulty. The second sentence of art. X, paragraph 2 of the Feda terms and conditions for trading companies applies by analogy. In that case, a new warranty period of 12 months applies, on the understanding that each warranty will lapse as soon as 24 months after the original execution of the work have passed.