

GENERAL TERMS AND CONDITIONS

OF

NEW ENERGY SYSTEMS SERVICES B.V.

March 24th, 2014

Article 1 Definitions

In these general terms and conditions, the following expressions have the following meanings:

1. NESS: the private company with limited liability New Energy Systems Services B.V., registered in the commercial register of the Chamber of Commerce in Limburg under number 58187677;
2. Other party: the opposite contract party as referred to in article 6:231, subsection c, of the Dutch Civil Code, being the party to whom an offer is made by NESS, or with whom an agreement is concluded by NESS, or to whom goods or products are supplied.

Article 2 Applicability

1. These general terms and conditions are applicable to all legal relationships between NESS and the other party, except insofar as statutory regulations exclude or limit the application of these conditions, and notwithstanding deviations from these conditions which must be expressly confirmed by both parties in writing.
2. The applicability of general supply, payment, and purchasing conditions of the other party, of any description whatsoever, is expressly excluded. Those conditions are not applicable for the legal relationships with NESS.

Article 3 Realization of the agreement

1. Quotations and offers of NESS are always without engagement and can be revoked by NESS up to seven days after the receipt of an acceptance.
2. Data, drawings, samples, or models issued or shown in connection with a quotation or offer are only indicative.
3. The realization of the agreement shall be effected as soon as the order confirmation signed by both parties has been received back by NESS. The order confirmation shall be based on the information issued by the other party to NESS at that time. The order confirmation shall be deemed to give a full and accurate representation of the agreement.
4. The parties are entitled to prove that the realization of the agreement was effected in some other way.
5. All agreements shall be exclusively accepted and carried out by NESS.

Article 4 Obligations of the other party / provision of information by the other party

1. The other party is obliged to provide all the information and documents, which NESS in its opinion needs for the correct execution of the agreement, on time in the desired form and in the desired way.
2. Moreover, the other party shall inform NESS of all other information that is relevant for the execution or completion of the agreement.
3. The other party guarantees the correctness, completeness, and reliability of the data and documents made available to NESS, even if these are provided by third parties, insofar as not otherwise arising from the nature of the agreement.
4. The other party shall indemnify NESS against any claims of third parties in relation to the information, data, decisions, changes, and records referred to in paragraphs 1, 2, and 3 of article 4.
5. If and insofar as the other party requests such, the documents of the other party made available to NESS shall be returned to the other party.
6. The extra costs and extra hours incurred by NESS due to the other party not providing the required documents for the performance of the agreement or not on time or not properly are for the other party's expense and risk.
7. The other party is obliged to notify NESS about any change of address. Until such time, NESS is allowed to send all announcements and notifications to the address the other party provided when the agreement was concluded.
8. The other party is obliged to treat all (commercial) information and all data received from NESS in relation to the agreement as confidential.
The other party may not use the received data or information for its own use, or allow the use of such by, and/or make such known to, third parties. If the other party breaches any obligation pursuant to this paragraph, the other party shall, without a notification being required, be liable to NESS for a penalty that will be forthwith due and payable, without any entitlement to set-off or judicial mitigation, of € 100,000 per event and € 1,500 for each day that such a breach continues, without prejudice to the right of NESS to claim full compensation for damages in addition to the penalty.

Article 5 Delivery

1. If the other party dues an advance payment or has to provide information and/or materials for the execution, the period within which the work has to be completed will not commence until the date on which payment is fully received respectively all the information is and/or the materials are provided.

2. All the delivery times stated by NESS are indicative, and are not to be considered as fixed and final deadlines.

3. The agreement cannot be dissolved by the other party because of an overdue deadline, nor can the other party claim any compensation on such grounds - unless execution will be indubitable permanently impossible.

4. If NESS is not able to make a complete delivery, then it is entitled to execute the order in parts. NESS shall then designate the part not delivered for subsequent delivery, and will notify the other party of it in writing.

Article 6 Risk

1. All delivery's are "ex works". Risk of loss of or damage to any consignment of the products shall pass to the other party from the time the delivery leaves NESS' premises, including if the goods are delivered "carriage paid".

2. If the other party does not take off the agreed goods, or not on time or not in full, NESS shall have the right to store the goods for the expense and risk of the other party. The payment obligations of the other party will remain in force unimpaired, and will be increased by the extra costs that NESS has had to incur.

3. The other party will be obliged to pay NESS the storage charges in accordance with the usual rates of NESS, or, in the absence of such, in accordance with the usual rates in the industry, to be paid as of the date that the goods are ready for transport, or as of the delivery date agreed in the agreement if this date is later.

Article 7 Force Majeure

1. Should NESS prove unable to meet its obligations due to circumstances beyond its control and risk, NESS is not liable to pay any compensation whatsoever. Such circumstances (force majeure) include, but are not limited to: war, threat of war, civil war, rioting, molestation, fire, water damage, flooding, labour strikes, factory occupations, lock-outs, import and export restrictions, acts of government, defects in machinery, interruptions in the supply of gas, water, or electricity, and the stagnation and/or interruption of supplies of third parties from whom NESS has to obtain commodities, materials, or components for the execution of the agreement, and moreover all other causes beyond the control or liability of NESS.

2. In the event the other party has not attributably failed in the fulfilment of the agreement, NESS is entitled to dissolve the agreement partially or fully.

Article 8 Warranty

1. NESS grants a warranty, both with respect to the other party as with respect to customers of the other party, exclusively for defects in the components of the delivered goods and products that have become defective due to material, construction, or manufacturing faults, and which arise during the warranty period of 24 months after the delivery of the goods or products.
2. Damages or defects which are caused by installation errors, improper use, use in violation of the issued manual, soiling, negligent or poor maintenance, as well as surface damages, fall outside the warranty.
3. The warranty of NESS under paragraph 1 of article 8 is limited to the repair of the defective goods free of charge or the replacement of a part of the good, this at the discretion of NESS.
4. The limited warranty as worded in this article replaces and/or expressly excludes any other explicit or implicit warranty, such to include, but not limited to, a warranty of saleability or suitability for a particular purpose, use, or application.

Article 9 Complaints

1. A claim or complaint with regard to the delivered goods by NESS must be submitted to NESS as soon as possible, but in any case within thirty days after discovery of the shortcoming or the shortcoming reasonably could have been discovered, on penalty of any legal claim lapsing.
2. Returned goods or products will not be accepted unless approval has been given in writing beforehand by NESS. They must be sent carriage paid and properly packaged.
3. A claim or complaint as referred to in paragraph 1 of article 9 does not suspend the payment obligation of the other party.

Article 10 Intellectual and industrial property rights

1. NESS reserves all rights in relation to its intellectual products and goods that it uses, or has used, in connection with a quotation for, or the execution of an agreement.
2. The other party is expressly forbidden to reproduce, to publish, or to exploit those products and goods, such including designs, drawings, images, software, working methods, advice, other documentation, and other intellectual products of NESS, this in the broadest sense of the term, with or without the involvement of third parties.

3. The intellectual and industrial property rights to all products, goods, data, and technical information supplied to the other party will remain vested in NESS.

NESS has the exclusive right of publication, materialisation, and reproduction of these products and goods, data, and information, and the other party only has a licence to use it.

4. The licence of the other party in relation to the use of the software developed and supplied by NESS is not exclusive. The other party may only use this software in its own company or organisation, and only for the installation of the items for which the licence was issued.

5. The licence to use is non-transferable. The other party is not permitted to make the software and the data carriers on which it is saved available to third parties, or to allow a third party to use it, in any way whatsoever. The other party is not permitted to reproduce the software or to make copies of it. The other party shall not modify the software except in connection with the rectification of errors. The source code of the software and the technical information generated during the development of such shall not be made available to the other party unless otherwise is agreed upon.

Article 11 Resale and installation

1. The other party is, in the event of resale of the delivered goods and the installation of such, obliged to strictly and accurately follow the detailed manual supplied together with the delivered goods that describes how the installation must be carried out.

2. NESS excludes all liability where resale of the delivered goods and the installation of it has taken place in violation of that provided for in paragraph 1 of article 11. NESS furthermore excludes all liability for losses or damages resulting from the installation carried out by the other party or a third party engaged by the other party.

Article 12 Prices

1. The prices charged for the goods or products to be supplied under the agreement will be those that apply on the date of supply.

2. If after the realisation of the agreement, but before it is fully executed, wages and/or prices change, NESS will be entitled to adjust the agreed price accordingly. This will not give the other party a right to full or partial dissolution.

3. The expenses incurred in connection with the agreement – such to include transport costs and costs of third parties engaged for the performance of the agreement – are not included in the price, and shall be charged for separately to the other party.

4. The turnover tax (VAT) will be charged separately on all amounts payable by the other party to NESS.

Article 13 Payment

1. Payment by the other party must take place, without deduction, discount, or set-off, within the agreed deadlines, but in no case later than fifteen days after the invoice date. Payment must be made in Dutch currency by transfer to a bank account to be designated by NESS.
2. NESS is entitled to invoice for part deliveries separately.
3. If the other party has not paid within the deadline referred to in paragraph 1 of article 13, NESS shall be entitled, without any further notice and without prejudice to any other rights of NESS, to charge the other party statutory (commercial) interest as of the due payment date up until the date of payment in full.
4. If the other party has not made its payment within the deadline, NESS is entitled to deem the agreement to be dissolved without judicial intervention being required. In that case, the other party will be liable for the losses suffered by NESS, including, but not limited to, loss of profits and the cost of the notice. In the event NESS files for bankruptcy of the other party, the other party shall also be obliged to pay, in addition to the costs referred to in this paragraph, the costs of the bankruptcy petition.
5. All judicial and extrajudicial (debt collection) costs, that NESS has to incur as a result of the non-performance by the other party of its payment obligations shall be for the expense and risk of the other party. This concerns the costs charged over the principal in accordance with the Decree on the Payment of Extrajudicial Debt Collection Costs of 1 July 2012 (Besluit voor vergoeding van buitengerechtelijke incassokosten van 1 juli 2012).
6. If NESS is in the opinion the other party's financial position or the payment record gives it reason to do so, NESS is entitled to demand that the other party immediately provides (additional) security in a form to be specified by NESS. If the other party fails to provide the required security, NESS will have the right, without prejudice to its other rights, to immediately suspend the further performance of the agreement forthwith, and all amounts owed to NESS by the other party of whatever nature and for whatever reason shall become immediately due and payable.
7. A payment by the other party will first of all serve as payment for any costs owed, and thereafter as payment for any interest owed, and finally as payment for the invoices that have been the longest overdue, even if the other party has stated that the payment relates to a later invoice.
8. In the event of an agreement with two or more opposite contract parties, these opposite contract parties are jointly and severally liable for the payment of the invoice amount.

Article 14 Dissolution

1. Without prejudice to the provisions in article 13, the agreement shall be dissolved without judicial intervention after a written notice has been issued on the date on which the other party is declared bankrupt, applies for a suspension of payments, liquidates or discontinues its company, or if an application is approved by the District Court (Rechtbank), whereby the other party, as a natural person, is allowed to participate in debt restructuring, or by an seizure or receivership imposed by the courts, or in any other way, loses the right of disposal over his assets or parts of it, unless the trustee or receiver or administrator acknowledges the obligations arising out of this agreement as an estate debt (Boedelschuld).

2. Due to the dissolution, all existing reciprocal claims will become immediately payable. The other party will be liable for the losses incurred by NESS, including, but not limited to, loss of profits.

Article 15 Retention of title

1. Ownership (both legal and equitable) of the goods and products shall remain with NESS and shall not pass to the other party until the other party has fulfilled all its obligations under the agreement(s) concluded between the parties, such to include that which the other party might owe due to a shortcoming in the performance of its obligations.

2. Notwithstanding that ownership of the products has not passed to the other party pursuant to paragraph 1 of article 15, the parties agree that the other party may sell the goods and products in the ordinary course of its business. The other party is not permitted to pledge or in any other way encumber these goods.

3. If the other party fails to meet its obligations, or if a justifiable fear exists that it will not meet its obligations, NESS is entitled to repossess the goods that are still its property pursuant to paragraph 1 of article 15.

The other party is obliged to provide all necessary cooperation with the repossession, such on pain for a penalty of € 500 per day that will be forthwith due and payable.

4. If third parties want to establish or enforce rights on the goods or products supplied under retention of title, then the other party must notify NESS of such immediately.

Article 16 Liability

1. NESS will no longer be liable for defects after the date of delivery of the goods, unless the defects are attributable to NESS and the other party has made a valid complaint pursuant to article 9 of these general conditions.

2. Insofar as NESS is liable pursuant to that provided for in paragraph 1 of article 9, then it is only liable for the direct material damages incurred by the other party.

3. Indirect damages or consequential losses, such to include consequential damages, loss of production, loss of turnover of profits, depreciation in value, and loss of products, are not considered to be a direct material damage and NESS is therefor not liable.
4. If a mistake is made because the other party has issued inaccurate or incomplete information or directions, NESS is not liable for the damages resulting from it.
5. NESS is only liable for compensation of other damages than those specified in this article if and insofar as the other party can prove that such are attributable to the wilful misconduct or negligence of NESS.
6. NESS is not liable for any damages arising out of the agreement for which cover has been provided by the insurer of the other party. If and insofar as the other party has insured any risk associated with the agreement, it is obliged to claim any damages under that insurance and to indemnify NESS against any redress of the insurer.
7. The amount of the damages to be compensated by NESS shall be limited to the amount of the price charged for the execution of the agreement.
8. In no case, however, shall the damages amount to more than the total of the insurance excess limits/deductibles of NESS and the amount which is payable for the case concerned according to the insurer of NESS, up to a maximum of € 100,000.
9. All liability of NESS will expire, unless otherwise agreed, after a period of 6 months has elapsed as of the date on which the agreement is ended by way of delivery, dissolution, or termination.
10. The right to make a claim in relation to a defect shall expire after one month has elapsed as of the date on which a written and reasoned notice of default has been issued.
11. The other party shall indemnify NESS against all claims by third parties due to product liability as a result of a fault or defect in a product and or the fitting of it delivered by the other party to a third party, and which partly consisted of goods or products developed and/or delivered by NESS, unless and insofar as the other party is able to prove that the damage was caused by these goods or products, and without prejudice to the provisions in paragraph 6 of this article.
12. The limitations of liability recorded in the previous paragraphs of this article also apply to benefit any of the third parties engaged by NESS, who consequently can therefore directly invoke this limitation of liability.

Article 17 Expiry date

To the extent not otherwise provided in these general terms and conditions, all claim rights, rights of action and other powers of the other party of whatever nature and for whatever reason against NESS in connection with the supply of goods or products or the execution of work by NESS shall always expire after one year from the moment the other party became aware, or could reasonably have been aware, of the existence of such rights and powers.

Article 18 Conversion; conflicting provisions

1. If any provision from these general terms and conditions should be wholly or partly void and/or invalid and/or unenforceable as a result of any statutory provision or regulation, court judgement or otherwise, but would be valid if it had more limited scope or intention, then such provision will apply with the most far-reaching or most extensively more limited scope or with which or within which it is valid.

2. In the event the applicable general conditions and the agreement contain conflicting provisions, the provisions included in the agreement will prevail.

Article 19 Applicable law and choice of forum

1. All agreements and contracts between the other party and NESS, which these conditions are applicable to, shall be governed by Dutch law with the exclusion of the Vienna Sales Convention.

2. All disputes associated with agreements and contracts between the other party and NESS, which these conditions applicable are to and which do not fall within the competency of the sub-district courts (kantonrechter), shall be settled by the competent court in the district where NESS has its registered office.

These general terms and conditions are available in Dutch and in English. In event of a dispute regarding the contents or meaning of these general terms and conditions only the Dutch version is binding.