



# GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY

## Batenburg Industriële Elektronica B.V.

### Art. I General

1. These General Terms and Conditions of Sale and Supply form part of offers and agreements for supply by the contractor. All provisions of these terms and conditions shall be effective between the parties unless expressly derogated from in writing by both parties. Any reference by the client to its own terms and conditions of purchase, tender or any others are not accepted by the contractor and as such are expressly rejected.
2. In these terms and conditions of supply the following shall be taken to mean:
  - the contractor: Batenburg Industriële Elektronica B.V. referring in its offer or agreement to these General Terms and Conditions of Sale and Supply;
  - the client: the party to whom the aforesaid offer is addressed or with whom the contractor has concluded the aforesaid agreement.

### Art. II Offers

1. All offers issued by the contractor are without obligation. An agreement shall only arise if and so far as the contractor accepts an order of the client in writing or an order is implemented.
2. Data stated in catalogues, illustrations, drawings, weights and measurement specifications etc. are only binding if and so far as they are expressly included in a contract signed by the parties or a confirmation of order signed by the contractor.
3. The offer made, and the drawings, calculations, software, descriptions, models, tools etc. produced or supplied by the contractor shall remain its property irrespective of whether costs have been charged for the same. Information comprised in these or based on manufacture and construction methods, products etc. shall remain exclusively reserved to the contractor, even if costs have been charged for the same. The client warrants that the said information will not be copied, shown to third parties, disclosed or used without the written consent of the contractor, other than for the carrying out of the agreement.
4. For delivery of special manufactures the contractor reserves the right to delivery up to 10% more or less than the quantity ordered.

### Art. III Agreement

1. If the agreement is entered into in writing, it enters into force on the day of signature of the contract by the contractor.
2. Additional work is deemed anything which is supplied and/or provided by the contractor during the carrying out of the agreement in consultation with the client whether recorded in writing or not, beyond the quantities expressly recorded in the contract or confirmation of order, or provided by

the contractor beyond the activities expressly recorded in the contract or confirmation of order.

3. Cancellation of an agreement by the client is only possible if made in writing with the agreement of the contractor. Any financial obligations of the contractor towards third parties in connection with the cancelled agreement, which the contractor must fulfill, including among others purchased or ordered materials, shall be charged fully to the client and reimbursed by the same. In addition the client shall in case of cancellation of an agreement owe the contractor compensation in the amount of 50% of the agreed price.

### Art. IV Price

1. The prices stated by the contractor are exclusive of turnover tax and other public taxes due on sale and supply and are based on delivery ex-works according to the Incoterms valid on the date of offer, unless provided for otherwise in these terms and conditions or on agreement.
2. If after the date of coming into force of the agreement one or more of the cost-price factors undergoes an increase, whether as a result of foreseeable circumstances or not, the contractor shall be entitled to increase the agreed price accordingly.
3. The agreement implies the contractor's entitlement to separately charge additional work executed by it. The rules given in paragraphs 1 and 2 of this article apply accordingly for the calculation of additional work.
4. Cost estimates and plans are not charged separately unless agreed otherwise. If in case of subsequent orders the contractor must make new drawings, calculations, descriptions, models or tools etc., costs for the same will be charged.
5. Packaging charged separately by the contractor will be reimbursed at a value to be laid down by the contractor on a case by case basis, provided it is returned carriage paid and undamaged within one calendar year of delivery.

### Art. V Lead time

1. The lead times stated by the contractor are based on the circumstances applicable for the contractor at the time of conclusion of the agreement and, insofar as dependent on the services of third parties, on the data provided by those third parties to the contractor.
2. The lead time starts to run from the date on which the agreement enters into force, as mentioned above in Art. III.1 If for the carrying out of the agreement the contractor requires data or resources to be supplied by the client or third parties, then the lead time will start to run from the day on which all necessary data or resources are





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in the contractor's possession, but in any case no earlier than the date on which the agreement enters into force.

3. Where the lead time is exceeded the client shall have no right to any compensation. Nor shall the client have a right to terminate the agreement in such a case.
4. The contractor shall have the right at all times to make part deliveries.

#### Art. VI Inspection and acceptance test

1. Unless otherwise agreed, the client shall inspect the product within at the latest 8 days of delivery. If this period elapses with no report of well-founded complaints specified in writing the product shall be deemed to be accepted.
2. If an acceptance test is agreed the client shall enable the contractor to perform the necessary tests after delivery and to make such improvements and changes as are deemed necessary by the contractor. The acceptance test shall be held immediately after the contractor's request to that end in the client's presence. If the acceptance test is carried out with no specified and well-founded complaints, or if the client does not fulfill its aforesaid obligations, the product shall be deemed to be accepted.
3. The client shall make available the necessary facilities for the acceptance test and any other tests, and representative samples of any materials to be treated or processed, to a sufficient extent, on time and free of charge at the proper location so that the parties can imitate as far as possible the foreseen conditions of use for the product. Paragraph 2 of the foregoing article shall apply accordingly if the client does not comply with this.
4. In case of insignificant defects, notably those not or scarcely affecting the use of the product, the product shall be deemed to be accepted notwithstanding such defects.
5. Notwithstanding the contractor's obligation to comply with its duties of guarantee, acceptance pursuant to the foregoing paragraphs shall exclude any claim by the client in respect of a defect in the contractor's service.

#### Art. VII Transfer of risk and property

1. Delivery of the goods will occur on site and date expressed in the offer or the confirmation of order. Unless agreed otherwise according to the conditions usual in the trade, such as DAP (Delivered At Place) and other valid Incoterms.
2. If the conditions mentioned in paragraph 1 are not agreed, the risk in the goods and the packaging shall always be transferred at the time at which the goods are deliverable and the delivery of the

goods shall be effected at the expense and risk of the buyer.

3. If the client does not take possession or receipt of the goods or the documents issued for the goods at the agreed time, the client shall de jure be in default. In his case the contractor shall be entitled to store the goods at the expense and risk of the client. The client shall continue to owe the purchase price, plus interest and costs (by way of compensation).
4. Irrespective of delivery, the property of all goods shall only pass to the client after the client has fully paid everything he owes or will owe the contractor in respect of the goods, including among others the purchase price, any surcharges owed as a result of these terms and conditions or the agreement, interest, taxation and costs, and any remuneration of activities executed or to be executed in respect of the goods.
5. Before the property of all goods passes to the client, the client shall not be entitled to sell, deliver, or alienate the goods, lease or make them available to third parties, pledge them to third parties or in any other way charge them in favor of third parties. In that case the client shall only be entitled to use the goods within the context of its usual course of business.
6. If and so far as the property in the goods has not yet passed to the client, the client shall immediately notify the contractor in writing if the goods are seized or a claim is made on any part of the goods in any other way.
7. In case of seizure, bankruptcy or (temporary) moratorium the client shall immediately refer the seizing bailiff, the receiver or the administrator to the contractor's proprietary rights.

#### Art. VIII Payment

1. Unless otherwise agreed, payment of all invoices must be effected within 30 days of the date of invoice, without any deduction, discount, compensation or set-off.
2. If at any time the contractor has obvious doubts about the client's credit worthiness, the contractor shall have the right, before providing (further) services, to require the client to pay the purchase price in advance in whole or in part or to provide satisfactory security.
3. The client shall be in default as soon as a payment period elapses. In that case all claims of the contractor against the client shall become immediately due and payable.
4. The client shall without further notice of default on all amounts not paid at the latest by the last day of the payment period owe from that day statutory interest for commercial transactions, plus a surcharge of 3%.





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5. If after expiration of a further payment period set by registered letter the client has still not paid the amount and interest due, the client shall be bound to reimburse all legal and other costs.

### Art. IX Guarantee

1. The contractor warrants both the soundness of the product it delivers and the quality of the material used and/or supplied for the same. The above only applies insofar as defects not observable on inspection/ acceptance test are concerned, which the client proves arose within 12 months of delivery. Only defects which are exclusively or predominantly the direct consequence of inaccuracy in the construction applied by the contractor or faulty workmanship or use of poor materials are covered by the guarantee.
2. The contractor shall remove defects covered by the guarantee mentioned in paragraph 1 by sending a replacement part. All costs arising beyond the single obligation as described in the previous sentence, such as but not restricted to transport costs, travelling and accommodation costs and costs of dismantling and installation, shall be borne by the client.
3. In any case defects shall not be covered by the guarantee arising or a consequence of, in whole or in part:
  - a. non-observance of use and maintenance instructions or use other than that envisaged as normal;
  - b. normal wear and tear;
  - c. installation or repairs by third parties, including the client;
  - d. application of any government regulations in respect of the nature or quality of the materials used;
  - e. used materials and/or things applied in consultation with the client;
  - f. materials or things supplied by the client to the contractor for treatment;
  - g. materials, things, ways of work and constructions insofar as applied on the express instruction of the client, and materials and things delivered by or on behalf of the client;
4. If the contractor has involved components of third parties, the contractor shall only be bound to guarantee if and so far as those third parties supply a guarantee to the contractor. In no case shall the contractor be bound to more than that which arises from this article.
5. If the client does not, not properly or not promptly comply with any obligation arising for it from the agreement concluded with the contractor or from an agreement connected with the same, the contractor shall not be bound to any guarantee,

however named, relating to any of those agreements. If the client proceeds with or causes to be proceeded with, dismantling, repair, replacement or other activities in respect of the product without the prior written approval of the contractor, any claim arising from guarantee shall lapse.

6. Complaints in respect of defects must be made in writing within 8 days of discovery of the same; where this period is exceeded any claim against the contractor in respect of those defects shall lapse. Legal proceedings in this respect must be instituted within 1 year of prompt complaint under penalty of expiry.
7. If the contractor replaces components and/or products in pursuance of its guarantee obligations, the replaced components/products shall become the property of the contractor.
8. In respect of repair or overhaul activities or other services carried out by the contractor, only the soundness of the performance of the activities ordered shall be covered by guarantee, and as such for a period of 6 months.  
This guarantee incorporates the contractor's single obligation in case of unsoundness to re-execute the activities concerned, insofar as they are unsound.
9. The contractor's alleged non-compliance with its guarantee obligations shall not discharge the client from obligations arising for it from any agreement concluded with the contractor.

### Art. X Liability

1. The contractor's liability is limited to compliance with the guarantee obligations described in article IX of these terms and conditions.
2. Other than gross negligence on the part of the contractor and other than the provisions of paragraph 1, any liability of the contractor, such as for loss of profits, consequential loss, other indirect loss and loss as a consequence of liability towards third parties, is excluded.
3. The contractor is therefore also not liable for:
  - infringement of patents, licenses or other rights of third parties as a consequence of use of data supplied by or for the client;
  - damage or loss, from any cause, of raw materials, semi-finished goods, models, tools or other things made available by the client.
4. The client is bound to indemnify or hold the contractor harmless as the case may be in respect of all claims of third parties for compensation of loss, for which the contractor's liability in the relationship with the client is excluded in these terms and conditions.
5. Items with mechanical qualities where the traction force  $R_m > 1000 \text{ N/mm}^2$  (among others mounting





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items quality 10.9 and above) and/or where the hardness is in whole or in part above 320 HV (hardness Vickers) (among others items with elastic qualities such as thrust rings, tension pins, spring collars and clamping washers) are at risk of breakage as a consequence of hydrogen brittleness which can be caused by surface electrolyte processes. The contractor shall not accept any liability for the occurrence of breakage as a consequence of hydrogen brittleness, nor for any consequential loss.

#### Art. XI Force Majeure

In these terms and conditions force majeure shall be taken to mean any circumstance independent of the intention of the contractor, even where such was foreseeable at the time of coming into force of the agreement, which permanently or temporarily prevents performance of the agreement, and, where not already meant, war, threat of war, civil war, riot, strikes, worker lockouts, transport difficulties, fire, flood and other serious disturbances to the business of the contractor or its suppliers.

#### Art. XII Suspension and termination

1. In case of prevention in carrying out the agreement as a consequence of force majeure the contractor shall be entitled without judicial intervention to either suspend the execution of the agreement for no more than 6 months or terminate the agreement in whole or in part without being bound to any compensation. During the suspension the contractor shall be entitled and at the end thereof it shall be bound to choose between execution and termination of the agreement in whole or in part.
2. Both in case of suspension and termination by virtue of paragraph 1 the contractor shall be entitled to demand payment forthwith of the raw materials, materials, components and other things which it has reserved, taken for treatment and manufactured for the purpose of carrying out the agreement, at a value which may reasonably be attributed to the same. In case of termination by virtue of paragraph 1 the client shall be bound to assume the things comprised therein after payment of the amount due by virtue of the foregoing sentence, in default of which the contractor shall be entitled to cause those things to be stored at the expense and risk of the client or to sell them at the client's expense.
3. If the client does not, not properly or not promptly comply with any obligation arising for it from the agreement concluded with the contractor or from an agreement connected with the same, or if good grounds exist to fear that the client is not or will not be capable of fulfilling its contractual obligations

towards the contractor, and in case of bankruptcy, moratorium, shutdown, liquidation or partial transfer -whether as security or not -of the client's business, including transfer of an important part of its claims, the contractor shall be entitled de jure and without judicial intervention to either suspend the execution of each of these agreements for no more than 6 months or terminate them in whole or in part without being bound to any compensation or guarantee and without prejudice to any further rights it may be entitled to.

During the suspension the contractor shall be entitled and at the end thereof it shall be bound to choose between execution and termination of the suspended agreement(s) in whole or in part.

4. In case of suspension by virtue of paragraph 3 the agreed price shall become immediately due and payable, with deduction of installments already paid and the contractor shall be entitled to cause the raw materials, materials, components and other things which it has reserved, taken for treatment and manufactured for the purpose of carrying out the agreement to be stored at the expense and risk of the client. In case of termination by virtue of paragraph 3 the agreed price -where there has been no prior suspension - shall become immediately due and payable, with deduction of installments already paid and the client shall be bound to pay the sum described above and assume the things comprised therein, in default of which the contractor shall be entitled to cause those things to be stored at the expense and risk of the client or to sell them at the client's expense.

#### Art. XIII Disputes

1. Other than where paragraph 2 of this article applies all disputes arising further to this agreement to which these terms and conditions apply, or further to additional agreements deriving from such agreement, shall be resolved by the competent court in the district of Rotterdam, The Netherlands.
2. Insofar as disputes described in the foregoing paragraph according to Dutch civil law are to be settled under the subject-matter jurisdiction of the sub-district court, only this competent sub-district court shall be able to settle the dispute.

#### Art. XIV Applicable law

All agreements to which these terms and conditions apply in whole or in part are subject to Dutch law, as valid for the Kingdom of the Netherlands in Europe.

