General terms and conditions
De Wijs Apparatenbouw
14-09-2018
Vleugelboot 68, 3991 CL HOUTEN

Article 1 – Applicability

1. These general terms and conditions apply to all engagements, including tenders and agreements, in which De Wijs Apparatenbouw (hereinafter referred to as 'De Wijs') is a party, subject to De Wijs' express prior confirmation of deviations.
2. The other party's general terms and conditions shall only be effective for the tenders of and the agreements with De Wijs if and where these are not in conflict with the present terms and conditions. In case of doubt as to whether such conflict exists, the terms and conditions of De Wijs prevail at all times.
3. An agreement between De Wijs and the other party, to which these general terms and conditions apply, has not been concluded until De Wijs has confirmed its acceptance of the offer in writing, or until De Wijs has commenced with the execution of the agreement without such notice.
4. The other party who has entered into an agreement with De Wijs to which these terms and conditions apply, is considered to have accepted these terms and conditions with regard to future agreements as well.
5. Possible non-application of (a part of) a provision from these general terms and conditions does not affect the applicability of the other conditions.
6. In the event of a discrepancy or conflict between these general terms and conditions and a translated version thereof, the Dutch text will apply.
7. These general terms and conditions also apply to follow-up or partial orders and continued or partial assignments arising from the agreement.
8. A steady trade relationship is in place in case De Wijs has already handed these general terms and conditions to the other party on several occasions. De Wijs does not need to present the general terms and conditions every time to cause them to be applicable to subsequent agreements.

Article 2 – Tenders

1. Any of De Wijs' tenders shall be free of engagement for both parties, unless explicitly stated otherwise in the tender.
2. The intellectual property right for designs, images, drawings, models, samples, products and other creations from the human mind provided with the tender or at a later stage shall at all times be vested in De Wijs or the suppliers of De Wijs. These intellectual property rights may never be used, multiplied, processed or in any other way disclosed or made available by the other party without the explicit prior permission of De Wijs and/or other entitled parties.
3. De Wijs shall not at any time be liable for the content of the information provided with the tender. De Wijs is not liable for deviations, errors, printing and/or typing errors in such details.

4. Every offer and every tender from De Wijs is valid for the period stated in the offer or tender. An offer or tender in which no period of validity has been mentioned is without obligation. In the case of a free offer or a tender without engagement, De Wijs has the right to revoke such offer or tender no later than 2 working days after receipt of the acceptance.

5. A compiled offer or tender does not require De Wijs to deliver part of the offered performance at a corresponding part of the price.

6. If the offer or tender is based on information provided by the other party and this information appears incorrect or incomplete or subsequently changes, De Wijs has the right to adjust the specified prices and/or delivery periods. If the other party does not lodge a written objection within 10 workdays, the adjusted prices and/or delivery periods will be deemed to have been approved by the other party.

7. The offer, the tender and the prices do not automatically apply to repeat orders or partial orders.

8. Shown and/or provided models, examples of documents as well as specifications of properties, capacities, dimensions, weights and other descriptions in brochures, promotional materials and/or on the website of De Wijs are as accurate as possible, but are only supposed to be indicative. The other party can not derive any rights from this.

9. The models and examples provided shall remain the property of De Wijs and must be returned to De Wijs within 5 working days upon De Wijs' first request at the expense of the other party.

10. De Wijs is entitled to charge the costs related to the offer or tender to the other party, subject to De Wijs' prior written notification of such costs to the other party.

11. If the other party does not accept an offer or tender, it must return all documents delivered with the offer or tender to De Wijs within 5 working days at De Wijs' first request.

Article 3 – Price and price adjustment

1. All agreed prices are binding and exclusive of any applicable sales tax, as well as the shipping costs, import duties and/or delivery costs, unless the parties have explicitly made other arrangements with regard to this. Online prices are shown excluding the VAT due.

2. De Wijs reserves the right to increase the agreed prices if, after the agreement has been entered into, however, before the time of delivery or performance of the agreement, any changes in one or more cost-price determining factors give rise to an increase. This particularly includes changes to rates and cost of transport. If De Wijs must increase the price due to these circumstances, it must timely notify the other party accordingly.

3. De Wijs is entitled to increase the price of the tender if, during the execution of the agreement, it appears that the agreed or expected amount of work was not properly assessed by the parties, while De Wijs is not responsible for this, and it cannot in fairness be required to perform the work at the agreed fee.

4. If the price changes due to the above circumstances (article 3 paragraph 3) exceed 10%, both parties are entitled to examine the feasibility of dissolving the agreement. In that case, the other party must fully reimburse the costs already incurred by De Wijs, such as, however not limited to the cost of development.

5. If the price increase takes place within three months after the conclusion of the agreement and the other party is not acting in a professional or business capacity (hereinafter: 'consumer'), the consumer is entitled to dissolve the agreement.
6. All prices are set in Euros.
7. Any changes to rates will at all times be at the expense and risk of the other party.

Article 4 – Conclusion of agreements, additional or less work

1. The agreement is concluded from the moment De Wijs has received a copy of the tender signed by the other party to the contract, even if such acceptance differs from the tender on minor points. However, if the acceptance of the other party deviates on essential points, the agreement will only become effective De Wijs' written approval of such deviations.
2. Every agreement is explicitly entered into by De Wijs under the condition precedent that the creditworthiness of the other party appears adequate, which is exclusively at the discretion of De Wijs. With respect to this, the other party undertakes to allow De Wijs to request information about the other party where necessary.
3. Orders from the other party must have a clear, written description of the nature of the assignment.
4. Changes to an assignment issued in writing must also be made in writing and must have a clear description of the changes. Changes are only binding for De Wijs if confirmed in writing by De Wijs.
5. Additional or less work will be discussed and calculated separately between the parties. Additional or less work means work that deviates from the assignment/tender issued at an earlier stage. De Wijs is entitled to decide on its own initiative and in consultation with the other party that additional or less work is required and to charge the corresponding costs.

Article 5 – Obligations on the part of the other party

1. The other party undertakes to make sure that:
    1. all information required for the execution of the agreement is provided to De Wijs upon return of the order confirmation and in the form required by De Wijs;
    2. in the event the work must be performed at the location of the other party or a location designated by the other party, De Wijs shall have access to this location at the previously announced working hours and also receive a general map of the location;
    3. the data carriers, electronic files, software, etc. provided by the other party to De Wijs are free of viruses and/or defects;
    4. the parts, materials, content, semi-finished products, raw materials and so on, of which the parties have agreed that these will be supplied by the other party, shall be provided to De Wijs on time and in a good condition;
    5. at the location where De Wijs and/or the third parties engaged by De Wijs have to perform work under the terms of the implementation of the agreement, the facilities reasonably requested by De Wijs and/or the aforementioned third parties are present, while this does not involve any costs for their account;

6. any items to be provided to De Wijs by the other party with respect to repairs, overhaul or other work will be provided by the other party to De Wijs on time.

7. facilities as agreed by the parties upon the conclusion of the agreement shall be organised.

2. The other party shall ensure that the information provided is correct and complete and indemnifies De Wijs against any claims from third parties arising from the incorrectness and/or incompleteness of such information.

3. The other party must notify De Wijs within 14 days after discovery of any such incorrect or incomplete information of any developments within its organisation and that are or may be relevant for the execution of the agreement.

4. If the other party fails to meet the aforementioned obligations or fails to do so in time, De Wijs shall be entitled to suspend the execution of the agreement until the moment that the other party has fulfilled its obligations. The costs involved in the incurred delay or lost working hours, the costs of performing additional work and the other relevant consequences are for the account and risk of the other party.

5. Where the other party fails to fulfil his obligations and De Wijs fails to claim performance from the other party, this will not affect De Wijs' right to still claim fulfilment at a later date.

Article 6 – Delivery and risk

1. Any agreed periods shall not at any time be considered deadlines. If De Wijs does not fulfil its delivery obligations or fails to do so on time, the other party must hold De Wijs in default in writing and allow a reasonable period of time to still fulfil these obligations.

2. De Wijs is entitled to deliver in parts, whereby each partial delivery may be invoiced separately.

3. Goods are delivered EX Works, unless the parties make a different arrangements with respect to this. Dispatch or transport of the goods and documents takes place for the account and at the risk of the other party and in a manner to be determined by De Wijs. De Wijs is not liable for damage of any kind - whether or not to the goods or documents themselves - that is related to the shipment or transport.

4. If it proves impossible to deliver the documents or the goods to the other party or if the items are not collected and/or it proves impossible to perform the work agreed upon for the assignment due to a cause on the part of the other party, De Wijs reserves the right to store these documents or items and/or the materials, parts, etc. purchased for the order for the account and at the risk of the other party. The other party must enable De Wijs within a period to be set by De Wijs after notification of the storage to still deliver these goods or documents or to still perform the agreed work or to collect the goods or documents within this period.

5. If the other party fails to meet its obligation after the period referred to in the previous paragraph, it shall immediately be in default. De Wijs shall at such time have the right to dissolve the agreement with immediate effect through a written statement in whole or in part and to sell the goods to third parties or to destroy the already produced documents while this shall not create an obligation for De Wijs to compensate any damage, costs and interest. The foregoing does not affect the obligation of the other party to claim

compensation for possible (storage) costs, delay damage, loss of profit or other damage or De Wijs' right to fulfil its obligations. If the other party is a consumer, De Wijs will give the consumer notice of default before proceeding to asserting the above-described rights and allow another fourteen days to fulfil his/her obligation.

6. An agreed delivery period shall only take effect from the moment that De Wijs has received all information necessary with respect to the delivery and any agreed (advance) payment from the other party. If this causes a delay, the delivery period will be proportionally extended.
7. Upon the moment of delivery, the delivered item must immediately be examined for any damage and in any case within 5 (in words: five) working days. After the expiry of this period, an appeal for damage due to delivery is no longer possible.
8. If the other party is a consumer, complaints about faults in the delivered items must be reported within six months after delivery.
9. The goods shall be deemed to have been delivered in accordance with the agreement if they have been provided to the other party and the other party has examined and approved the operation of the goods or has examined and approved the specifications, properties, qualities, etc. agreed with the Wijs for the item.
10. The item to be developed shall also be deemed to have been delivered in accordance with the agreement if the other party has not filed a complaint to De Wijs within a period of 2 weeks after the notice that the work on the developed item was completed or earlier, to the extent the other party has started to use the developed case before such day.
11. Work not yet performed or not yet terminated by third parties engaged by or on behalf of the other party, which affect the proper use of the developed item, shall not have any influence on the delivery of the item.
12. Where the other party wishes to have changes made to the developed item by De Wijs upon completion, this will be regarded as additional work. De Wijs shall at such time be entitled to charge the costs and/or the time to be spent on such additional work to the other party.

Article 7 – Reservation of ownership

1. De Wijs reserves the ownership of all goods delivered and to be delivered pursuant to the agreement until the moment at which the other party has paid all its payment obligations to De Wijs.
2. The payment obligations referred to in the previous paragraph consist of the payment of the purchase price of the goods, increased by amounts payable for work performed related to the delivery and claims due to the attributable default of the other party in the fulfilment of its obligations, such as claims to pay compensation, extrajudicial collection costs, interest and any penalties.
3. With respect to the delivery of identical, non-individualisable items, the batch of items belonging to the oldest invoices is every time deemed to have been sold first. The retention of title therefore always lies with all the delivered goods that are still in the other party's stock, shop and/or property at the time of the retention of title is appealed to.

4. Goods that are subject to retention of title may be resold by the other party pursuant to regular business operations, provided that the other party has also imposed a retention of title with respect to the delivered goods on its customers.
5. As long as the delivered goods are subject to retention of title, the other party may not in any way pledge the goods or place the items under the (effective) control of a financier through pledging lists.
6. The other party must notify De Wijs immediately in writing and not later than within 3 working days if third parties claim to have ownership or other rights to the goods subject to retention of title.
7. The other party must keep the items carefully and as identifiable property of De Wijs for as long as the retention of title remains in place.
8. The other party must provide for a business or property insurance to the extent that the goods delivered under retention of title are covered at all times and will, upon first request, allow De Wijs to inspect the insurance policy and the associated premium payment certificates.
9. If the other party acts in violation of the provisions of this article or De Wijs invokes the retention of title, De Wijs and its employees shall irrevocably have the right to enter the premises of the other party and to take back the goods delivered under retention of title, without prejudice to De Wijs' right to claim compensation for damage, lost profits and interest and the right to dissolve the agreement without further notice through a written statement.

Article 8 – Intellectual property

1. De Wijs is and continues to be the owner of all intellectual property rights that are vested on, arise from, relate to and/or belong to the goods delivered by De Wijs under the terms of the agreement, unless the parties have agreed otherwise in writing. The assertion of such rights is expressly and exclusively reserved to De Wijs, both during and after the execution of the agreement.
2. This means, inter alia, that the other party may not copy, modify, reproduce and/or reproduce the items or parts thereof supplied by De Wijs without the prior written permission of De Wijs.
3. The other party warrants that any documents and files provided by him to De Wijs do not infringe third parties' copyrights or any other intellectual property rights. The other party is liable for any damage suffered by De Wijs as a result of such infringements and indemnifies De Wijs against claims from such third parties.

Article 9 – Guarantee

1. De Wijs guarantees the soundness and quality of the delivered goods for a one-year period with respect to the electronic parts (all parts that carry electricity and electrical components) and for the duration of three years with regard to the mechanical components.
2. The aforementioned period commences from the moment of delivery. This cannot be affected by the circumstance where the other party started the use of the goods at a later date.

3. This guarantee only includes defects in the delivered goods that were not externally visible at the time of delivery and with regard to which the other party proves that these have developed as a direct consequence of a faulty construction, defective finish or as a result of the use of defective materials. In the cases mentioned above, De Wijs will repair the defects free of charge. If the shipping costs exceed € 10 (in words: ten euros), such costs shall be for the account of the other party.

4. Any warranty claim shall be cancelled if it is established that, in De Wijs' reasonable opinion, the delivered goods have not been assembled or treated in accordance with its assembly or other instructions, or if the delivered goods have not been used in accordance with their intended use.

Article 10 – Installation and repair

1. De Wijs' liability for all direct costs and damage, in any way related to or caused by an error or shortcoming in the execution of the installation/repair work is at all times limited to the net invoice amount with respect to the respective assignment. De Wijs is not at any time liable for all indirect costs and indirect damage, in any way related to or caused by a fault or shortcoming in the execution of the installation/repair work. The other party indemnifies De Wijs against all third-party claims for compensation of damage or otherwise, which are directly or indirectly related to the execution of installation or repair work between De Wijs and the other party.

2. The costs incurred due to the repair (such as call-out charges and cost of dispatch) are for the account of the other party.

3. These terms and conditions are fully applicable to installations and repairs.

Article 11 – Complaints

1. Complaints about defects in the delivered goods must be made known within 5 (in words: five) working days after delivery. Complaints about shortcomings in the invoice must be notified within seven days after the invoice date.

2. If the other party is a consumer, complaints about shortcomings to the delivered goods must be reported within six months after delivery.

3. Complaints do not suspend the other party's payment obligation.

4. The other party must enable De Wijs to investigate the complaint and provide all relevant information to De Wijs. Return shipment which is necessary for an investigation into the complaint shall be for the account of the other party, unless the complaint proves to be legitimate. The transport risk is always for the other party.

5. Return shipment takes place at all times in a manner to be determined by De Wijs. The packaging must in any case be sufficiently resistant to damage.

Article 12 – Liability

1. De Wijs is only liable for direct damage. Any liability on the part of De Wijs for indirect damage, such as however not limited to consequential loss, trading loss, loss of profit and/or loss suffered, delay damage and/or personal injury or personal injury, is expressly excluded.

2. The other party must take all measures that are necessary to prevent or limit the damage. All costs that result directly and/or indirectly from these measures shall be for the account of the other party.
3. In particular, the aforementioned measures include compliance with the maintenance instructions supplied with the product by De Wijs. If it can not be demonstrated that the products have been maintained as far as reasonably possible in accordance with regulations, De Wijs cannot be held liable for any resulting damage.
4. If De Wijs is liable for damage suffered by the other party, the compensation obligation of De Wijs is at all times limited to a maximum of the amount paid by its insurer if the respective case. If the insurer does not pay or the damage is not covered by an insurance policy taken out by De Wijs, the compensation obligation of De Wijs is limited to a maximum of the invoice amount for the delivered goods or work performed.
5. The other party must submit a respective claim against De Wijs within 2 months after it became aware of or could have known about the damage suffered by the other party.
6. De Wijs is not liable and the other party cannot appeal to the applicable guarantee if the damage is caused by the following causes:
    1. due to improper use or use contrary to the purpose of the delivered goods or the instructions, advice, user instructions and so on provided by or on behalf of De Wijs;
    2. due to improper retention (storage) or maintenance of the goods;
    3. due to errors or omissions in the information provided to De Wijs by or on behalf of the other party;
    4. due to normal wear and tear, erosion or corrosion;
    5. due to aging and/or deterioration of the goods by external influences other than influences against which the items should normally be resistant (such as but not limited to weather influences);
    6. due to indications or instructions from or on behalf of the other party;
    7. as a result of the choice made by the other party with regard to the goods to be delivered;
    8. because repairs or other activities or operations have been performed on the delivered goods by or on behalf of the other party, without the express prior permission of De Wijs.
7. De Wijs is not at any time liable for integration (including however not limited to the assembly) of the items to be delivered, unless the parties have made an explicit agreement about this.
8. In the cases listed in the previous paragraph, the other party is fully liable for all resulting damage and expressly indemnifies De Wijs against all third-party claims for compensation for such damage.
9. The limitations of liability included in this article do not apply if the damage is due to intent and/or deliberate recklessness on the part of De Wijs or if mandatory statutory provisions

dictate otherwise. Only in these cases will De Wijs indemnify the other party for any claims by third parties against the other party.

Article 13 – Right of retention

1. De Wijs is authorised to suspend the issue of the ordered items and documents that it has produced for the other party relation to the execution of the agreement as well as the return of documents and items from the other party that De Wijs retains for assembly, maintenance or repair if and during the period that:
    1. the other party has not or not fully paid all costs of the work on such items;
    2. the other party has not paid or not fully paid all the costs of previous work performed by De Wijs on the items;
    3. the other party has not paid or has fully paid any other due and payable amounts arising from the contractual relationship with De Wijs.
2. De Wijs is not liable for any damage - of any nature whatsoever - arising from the right of retention asserted by De Wijs.

Article 14 – Bankruptcy and loss of power of disposition: end of the agreement

1. De Wijs is at all times entitled to dissolve the agreement without further notice of default through a written statement to the other party at the time the other party:
    1. is declared bankrupt or an application has been filed for bankruptcy;
    2. applies for (provisional) suspension of payments;
    3. an executory attachment is levied;
    4. is placed under guardianship or under administration;
    5. otherwise loses the power of disposition or legal capacity with respect to his assets or parts thereof.
2. The other party must always notify the trustee or receiver of the (contents of the) agreement and these general terms and conditions.

Article 15 – Force majeure

1. If and where De Wijs cannot, not or not timely, fulfil its obligations under the agreement due to force majeure, it is entitled to dissolve the relevant agreement without court intervention and without being liable to pay damages, or to suspend the obligations arising from the relevant agreement for a reasonable period to be determined by De Wijs.
2. In addition to the provisions in the law and jurisprudence, force majeure means in these general terms and conditions all external causes, anticipated or not anticipated, on which De Wijs cannot exert influence, however, due to which De Wijs is not able to fulfil its obligations. Work strikes in the company of De Wijs or of third parties are included as a force-majeure situation as well as any force-majeure situations with third parties, such as the breakdown of a machine. De Wijs furthermore has the right to invoke force majeure if the circumstance that prevents (further) performance of the agreement occurs after De Wijs should have fulfilled its obligation.

3. The other party shall be notified of a case of force majeure by De Wijs as soon as possible.

Article 16 – Payment

1. Payment of the agreed amount is made in advance, unless the parties have explicitly agreed otherwise. De Wijs cannot start the work before the full invoice amount has been received, unless otherwise agreed. An advance payment must always be paid in case of parties that are outside the European Union.
2. If it has been agreed that payment will take place afterwards, payments must be made within 14 days after the date of the invoice in euros, unless otherwise agreed.
3. If the other party has failed to pay within the aforementioned period, or within the further agreed term, it is in default by operation of law and it is due to De Wijs, with no further summons or notice of default, interest on the amount due by operation of law, which is equal to the statutory interest from the due date until the date of full payment and without prejudice to any other rights De Wijs is entitled to.
4. If the other party is a consumer, De Wijs shall, prior to proceeding to the measures described in the previous paragraph, grant the consumer another 14 days to settle the payments without incurring additional costs.
5. All costs resulting from an (extra)judicial collection are for the account of the other party. The extrajudicial costs are fixed at a minimum of 15% of the principal sum to be claimed.
6. If and where the other party is in default of payment, as well as in the event of bankruptcy, applications for suspension of payment and closure or liquidation of its business, any amounts claimable by De Wijs from the other party shall be immediately due and payable.

Article 17 – Distance selling

1. This article applies to all transactions between De Wijs and the other party acting as a consumer (not acting in the course of a profession or business) (hereinafter: 'the consumer') established via the internet and/or where De Wijs and the consumer do not have direct personal contact (hereinafter "distance selling").
2. In the event of a conflict between the provisions of this article and provisions from the other articles of these general terms and conditions - only in cases of distance selling - the provisions of this article shall prevail. In other cases - not being distance selling - the other provisions prevail.
3. After delivery of the goods, the consumer may dissolve the agreement free of charge within 14 days without stating reasons. De Wijs is obliged to refund the full purchase price (including shipping costs) upon dissolution. The consumer must bear the costs of return after dissolution.
4. The provisions of paragraph 3 do not apply if the goods are made to measure or according to the consumer's specification, if the other party acts in the performance of a profession or business or if the consumer has broken any available seals.
5. If De Wijs is responsible for failure in the fulfilment of the agreement, De Wijs is in default without a notice of default being required. An attributable default exists if De Wijs is more than 30 days late in the delivery of the goods and such default cannot be attributed to force majeure.

Article 18 – Personal data processing (GDPR)

1. With respect to the acceptance of an assignment, it is relevant that personal data of third parties should be exchanged. For the forwarding of (sensitive) personal data, the other party must provide this information to De Wijs in a secure manner. This may include adequate security on equipment as well as sufficiently secure transmission.
2. De Wijs is obliged to protection under the GDPR (General Data Protection Regulation) from the moment the personal data has come under its control up to the moment the personal data can be destroyed.
3. After receiving the (sensitive) personal data, De Wijs will handle these (sensitive) personal details with due care.
4. De Wijs will only share the data with its employees where sharing is necessary for the proper handling of the assignment and for the promotion of the quality of service provided by De Wijs.
5. De Wijs will not at any time share data with third parties without the express written consent of the other party, unless the nature of the assignment requires disclosure. In the latter case, the consent of the other party is deemed to have been adopted in the assignment.
6. The personal data will be carefully retained at the De Wijs office during the handling of the case and will only be moved if proper treatment of the case so requires. If the physical file is located outside the office of De Wijs, De Wijs will observe due care to prevent loss or unlawful processing of personal data.
7. Files and personal data will be kept by De Wijs both internally and externally during the legal retention period. De Wijs undertakes to carefully handle the storage and processing of the files. If De Wijs makes use of third parties for the storage of personal data, De Wijs will impose on the third party to maintain at least the same level of security.
8. If, in spite of De Wijs' care, a data breach nevertheless occurs with De Wijs or one of its auxiliary staff, De Wijs is only liable if the data breach was caused due to the failure of its systems security. In the event of damage, De Wijs is moreover only liable for the direct damage caused by the data breach and not for consequential damage.
9. Any liability is firstly further limited to the amount that the customer has paid in the past three months as a fee and secondly to the amount that De Wijs' liability insurer pays out in the specific case.

Article 19 – Applicable law and choice of court

1. The agreement concluded between De Wijs and the other party is governed by Dutch law only.
2. Any disputes will be submitted to the competent court in the place where De Wijs is established, although De Wijs reserves the right at all times to submit a dispute to the competent court in the place where the other party is located.
3. If the other party is located outside the Netherlands, De Wijs has the right to choose to submit the dispute to the competent court in the country or state where the other party is located.