

GENERAL TERMS AND CONDITIONS

Article 01. Definitions

In these General Terms and Conditions the following terms will be used in the following meaning, unless stated explicitly differently.

- Contractor: Logisch industriële automatisering B.V.
- Principal: the counterparty of the contractor.
- Commission : the activities to be determined in mutual consultation between principal and the contractor that has to take place.
- Agreement: the agreement between principal and the contractor to which these General Terms and Conditions apply.

Article 02. General

1. The General Terms and Conditions (or "GTC") apply to all special offers, offers, activities, commissions and agreements between the contractor and principals, respectively their successors. These General Terms and Conditions prevail also over the (general) terms and conditions of the principal if the contractor has not rejected the applicability thereof explicitly. A reference by the principal to his own purchase, tender or other conditions is not accepted by the contractor and is explicitly rejected.
2. If one or more stipulations in these General Terms and Conditions should at any time be or be declared invalid in part or in its entirety, then the remaining stipulations in these General Terms and Conditions shall remain fully in force. The contractor and the principal shall then enter into consultation in order to agree upon new stipulations for the replacement of the invalid or declared invalid stipulations, whereby as much as possible the objective and the tenor of the original stipulations shall be observed.
3. If between parties a situation may arise that has not been arranged for in these General Terms and Conditions or if there is confusion about the interpretation of one or more stipulations in these GTC, then this situation needs to be judged "in the spirit" of these stipulations.
4. If the contractor does not always request strict compliance with these GTC, then this does not mean that the stipulations thereof are not applicable, or that the contractor would in any way lose the right to require strict compliance with the stipulations of these GTC in other situations.

Article 03. Offers and special offers

1. Every special offer or offer issued by or on behalf of the contractor is non-binding and therefore does not bind the contractor, except if and insofar by the contractor it has been stated explicitly differently in writing or has been agreed by the parties differently in writing.
2. The contractor cannot be held to his offers or special offers if the principal can reasonably understand that the offers or special offers, or a part thereof, contains an obvious mistake or writing error.
3. Offers of the contractor are based on the information that has been provided by the principal. The principal warrants that he, to the best of his knowledge, has provided all essential information for the set-up, execution and conclusion of the commission.
4. If parties have not agreed differently in writing, the rate of the contractor is being determined on the basis of an hourly rate.
5. The prices stated in an offer or special offer are exclusive of VAT and other levies by the government, possible costs to be made in the framework of the agreement, including travel and board expenses, shipping and administration costs, unless stated differently.
6. If the acceptance (whether or not on lesser points) deviates from the offering included in the offer or the special offer then the contractor is not bound by it. The agreement is then not concluded according to this deviating acceptance, unless the contractor states differently.
7. A compounded price statements does not oblige the contractor to the execution of a part of the commission against a commensurate part of the stated price. Special offers or offers do not automatically apply to future orders.

Article 04. Contract duration and terms of execution

1. The agreement between the contractor and the principal is concluded for an indefinite period, unless from the nature of the agreement it is derived differently or if parties agree explicitly and in writing differently.
2. If a term has been agreed or stated for the execution of certain activities or for the delivery of certain goods then this is never a fatal term. In case of exceeding of a term the principal has therefore to declare the contractor in default in writing. The contractor then has to be given a reasonable term to execute the agreement after all.

3. The contractor cannot be held earlier to start with the execution of his activities, then after all information thereto required, data or goods are in his possession and he has received the possibly agreed payment term. He is authorized to start earlier and /or to deliver earlier, unless in the agreement something has been determined differently.
4. The contractor is authorized to execute the agreement in various phases and to invoice the thus executed part separately.
5. If the agreement is executed in phases then the contractor can suspend the execution of those parts that belong to a following phase until the principal has approved the results of the previous phase in writing.

Article 05. Execution

1. The contractor shall execute the agreement to the best of his insights and abilities and according to the requirements of good expertise. The span of his obligations is however also dependent on the degree of input and influence of the principal or of third parties employed by or on behalf of the principal.
2. The principal ensures that all data, of which the contractor indicates that these are necessary for or of which the principal reasonably should understand that these are necessary for the execution of the agreement, are provided timely to the contractor. If the data for the execution of the agreement are not provided timely to the contractor, then the contractor has the right to suspend the execution of the agreement and/or to charge the principal for the extra costs deriving from the delay according to the then usual rates.
3. The principal ensures timely for the availability free of charges and free access to the terrain, the building and the location on which or wherein the activities need to be executed, for clean, safe and healthy circumstances, as well as for suitable storage space there.
4. The principal is responsible for the state of the buildings /locations where and the installations or parts thereof around, where under, wherein or above which the activities will be executed, as well as for the circumstances that impede the execution of the activities or strongly hinder them. The principal is obliged to timely warn the contractor for dangerous situations.
5. The principal ensures, that the contractor will timely have the disposition over all goods of which it has been determined in the agreement explicitly that those will be made available by or on behalf of the principal. The principal is responsible should these goods not be proper or suitable.
6. Should the proper realization of the work by the principal make the appointment of one or more third parties necessary, then the principal will not proceed to that then after consultation with the contractor.
7. If the contractor upon instruction of the principal is required to cooperate with third parties, then the principal after consultation with the contractor shall determine which party is responsible is for the direction and coordination of the activities of the various parties. The contractor can set conditions hereto, as well as financial terms.
8. In the assessment of the proper execution of the work, the functional effect shall be decisive and the esthetic value shall remain excluded, which leaves unaffected that reasonable requirements should be met.

Article 06. Changes

1. If during the execution of the agreement it shows that it is necessary for a proper execution thereof to change or supplement this, and then parties shall timely and in mutual consultation proceed to adaptation of the agreement. On the basis of that also the originally agreed amount can be increased or decreased. The contractor shall thereto provide a price statement as much as possible in advance. In case of a change of the agreement furthermore the originally stated term of execution can be changed. The principal accepts the possibility of a change of the agreement, including the change in price and term of execution.
2. The contractor is not required to execute a change, if the change has not been agreed with the agreement of both parties.
3. If the contractor agrees with the principal a fixed fee or a fixed price, then the contractor is nevertheless at all times authorized to an increase of this fee or price without the principal in that case will be authorized to dissolve the agreement for that reason, if the increase of the price derives from a power or obligation according to laws or regulations or is caused by an increase of the price of raw materials, wages etcetera or on other grounds that were not reasonably foreseeable at the time of the conclusion of the agreement.
4. If the price increase other than as a consequence of a change of the agreement amounts to more than 10% and takes place within three months after the conclusion of the agreement, then solely the principal is authorized to dissolve the agreement by means of a written declaration, unless the contractor
 - Is willing to execute the agreement after all on the basis of the original agreed;
 - If the price increase derives from a power of or on a lawful obligation of the contractor;
 - If it has been stipulated that the delivery will take place longer than three months after the conclusion of the agreement;
 - Or, in case of delivery of a good, it has been stipulated that the delivery will take place later than after three months after the purchase.

Article 07. Suspension, dissolution and cancellation

1. The contractor is authorized to suspend the compliance with the obligations directly and with immediate effect or to dissolve the agreement, if the principal does not, not completely or not timely comply with the obligations under the agreement, circumstances having come to the knowledge of the contractor after the conclusion of the agreement give the contractor good grounds to fear that the principal shall not comply with the obligations, if the principal has been requested at the time of the conclusion of the agreement to provide surety for the compliance with his obligations under the agreement and this surety remains absent or is insufficient or in case of a delay at the side of the principal it can no longer be required from the contractor that he will comply with the agreement against the originally agreed conditions.
2. Furthermore the contractor is authorized to dissolve the agreement if circumstances arise that are of such nature that compliance with the agreement is impossible or if otherwise circumstances occur that are of such nature that an unchanged maintaining of the agreement cannot reasonably be required of the contractor.
3. If the agreement is dissolved, then the claims of the contractor on the principal are payable on demand immediately. If the contractor suspends the compliance with the obligations, he shall retain his claims on the basis of the law and the agreement.
4. If the contractor proceeds to suspension, then he is in no way held to compensation for damages or costs emerged in any manner.
5. If the dissolution can be imputed to the principal, the contractor is authorized to compensation for damages, including the costs that have emerged from that directly and indirectly.
6. If the agreement is cancelled prematurely by the contractor, then the contractor shall ensure in consultation with the principal for a transfer of the activities still to be executed to third parties. This unless the cancellation is imputable to the principal. If the transfer of the activities includes extra costs for the contractor, then these will be charged to the principal. The principal is obliged to pay these costs within the stated term, unless the contractor states differently.
7. In case of liquidation, or (filing for) suspension of payment or bankruptcy, or seizure of one of the parties - if and insofar the seizure has not been relieved within three months, a sanitation of debts or another circumstance due to which the concerned party no longer has the free disposition of his assets, then the other party has the freedom to cancel the agreement directly and with immediate effect or to cancel the order or agreement, without any obligation on his side to payment of any damages or compensation for damages.
8. If the principal cancels a placed order in its entirety or in part, then the activities that have been executed and the goods ordered and made ready, increased with the possible removal and delivery costs thereof and the labor time reserved for the execution of the agreement, shall be charged integrally to the principal.

Article 08. Force Majeure

1. Neither of the parties is obliged to the compliance with any obligation, including any agreed warranty between parties, if he is impeded thereto as a consequence of Force Majeure. Under Force Majeure shall also be understood:
 - Force Majeure of suppliers of contractor, the improper compliance with obligations by suppliers that have been prescribed by principal to contractor;
 - Defects of goods, equipment, programs or materials of third parties of which the use has been prescribed by principal to contractor;
 - Government measures;
 - Power disruptions, malfunction of the internet, computer network or telecommunication facilities,
 - War;
 - Labor occupation or strike;
 - General transport problems;
 - The unavailability for whatever reason of one or more members of the personnel or the management.
2. If a situation of Force Majeure lasts longer than ninety days, each of the parties has the right to dissolve the agreement in writing. All that has already been performed on the basis of the agreement proportionally, without the parties otherwise having obligations towards each other.

Article 09. Payment

1. All prices and rates are based on a normal working week from Monday to Friday. All activities that are executed outside the normal labor hours per calendar day are settled against the usual rates and surcharges of the contractor, unless differently agreed. All waiting hours or lost hours of the contractor caused by the principal are settled on the basis of the rates recorded in the agreement.
2. Payment, without retentions or set-off, should always take place within 30 days after the date of the invoice, in a way stated by the contractor in the currency of the invoice, unless stated in writing differently by the contractor. The contractor is authorized to invoice periodically.

3. If the principal remains in default for the timely payment of an invoice, then the principal is in default by law. The contractor can then claim compensation for interest against the trade interest by law. In that case the contractor is also authorized to dissolve the agreement. The interest over the due amount shall be calculated from the moment that the principal is in default till the payment of the fully due amount.
4. The principal is never authorized to set-off or suspension of the amount due by him to the contractor.
5. If the principal is in default or delay in the (timely) compliance with his obligations, then all reasonable costs for obtaining out-of-court satisfaction are for the account of the principal. The possibly made in-court and execution costs shall also be charged to the principal. The principal is also liable to pay interest over the due collection costs.

Article 10. Programs

1. If the work relates to programs and data files then the principal will ensure that he at all times has an actual back-up of the programs and data files and that he will store it in a safe place.
2. If the principal establishes errors in the programs made available by the contractor, he will immediately notify the contractor. Where in this stipulation there is a mention of errors. Will be understood under errors not to comply with explicitly agreed specifications or, in the absence thereof, with the functional specifications provided by the contract. There is only an instance of an error if it can be reproduced.
3. It is permitted for the contractor to take technical measures for the protection of the programs or with an eye on agreed limitations in the duration of the right to use of the programs. It is not permitted for the principal to remove such a technical measure or to circumvent it. If security measures have the consequence that the principal cannot make a back-up copy of the programs, then the contractor can provide the principal upon his request with a spare copy.

Article 11. Retaining property

1. The goods provided in the framework of the agreement by the contractor remain the property of the contractor until the principal has properly complied with all obligations under the agreement(s) concluded with the contractor.
2. The goods delivered by the contractor, that fall under the retention of property following section 1 may not be sold onwards and may never be used as a payment instrument. The principal is not authorized to give a line or in any other way encumber the matters falling under the retention of property.
3. The principal should always do all that reasonably may be expected of him to secure the property rights of the contractor. If third parties seize the matters provided in under the retention of property or want to vest rights in it, then the principal is required to notify the contractor thereof immediately. Furthermore the principal is obliged to insure the matters falling under the retention of property and to keep them insured against fire, danger of explosion and water damage, as well as against theft and to present the insurance policy upon the first request to the contractor for viewing. In case of a possible payout of the insurance, the contractor is entitled to these monies. Insofar as necessary the principal obliges himself towards the contractor to give his cooperation in advance to all that may be necessary or desirable in that framework.
4. In case the contractor wants to exercise his property rights referred to in this article, the principal gives in advance the unconditional and irrevocable permission to the contractor and to third parties to be designated by the contractor to enter into all locations where the properties of the contractor are located and to repossess them.

Article 12. Warranties and guarantees

1. Contractor will make an effort to the best of his abilities to repair errors in the programs in the sense of article 10.2 of these GTC within a reasonable term if these have been reported in detail in writing to the contractor within a period of three months after the delivery or, if between parties an acceptance test has been agreed, within three months after acceptance. Contractor does not warrant that the programs will work without interruption, errors or other defects or that always all errors and defects will be improved. Contractor is never liable to repair of damaged or lost data. Otherwise the guarantee or warranty shall only apply as has been agreed in the agreement or offer between parties.
2. The warranty in section 1 of this article shall be valid for a period of three months after delivery, unless it derives from the nature of the provided matter differently or if parties have agreed differently. If the warranty provided by the contractor regards a matter that has been produced by a third party, then that warranty is limited to the one provided by the manufacturer of the matter, unless stated differently.

3. Any form of warranty or guarantee becomes void, if a defect has emerged as a consequence of or derives from inexpert or improper use thereof or use after the validity or best before date, incorrect storage or maintenance of it by the principal and / or by third parties when, without permission in writing by the contractor, the principal or third parties have made changes to the matter or have tried to make them, have attached other goods to it, that should not be attached to it or if these were treated or processed in a different manner than prescribed. The principal shall also not have a claim on a warranty if the defect has emerged as a consequence of circumstances on which the contractor cannot exercise influence, including weather conditions (such as for instance but not exclusively, extreme rainfall or temperatures) et cetera.
4. The principal is required to inspect or have inspected the delivered matters, immediately after the goods have been made available to him or respectively, the concerned activities were executed. Thereby the principal is required to examine whether the quality and/or quantity of the delivered complies with what has been agreed and complies with the requirements that the parties have agreed in this matter. Possibly visible defects need to be reported within seven days after delivery in writing to the contractor. Possible non visible defects are required to be reported immediately, but in any case within fourteen days after the discovery thereof, in writing to the contractor. The notification needs to include a description as detailed as possible of the defect, so that the contractor is able to respond adequately. The principal is required to enable the contractor to examine or have examined a compliant.
5. If the principal claims on time, then this does not suspend his payment obligation. The principal remains also in that case liable to receive and to payment for the otherwise ordered goods and to what he has commissioned the contractor to do.
6. If a report of a defect is issued later, then the principal shall no longer have a right to repair, replacement or compensation of damages.
7. If it has been established that a good is defect and a timely claim has been made, then the contractor will, within a reasonable term after the return shipment thereof or, if returning is reasonably not possible, after written notification regarding the defect by the principal, at the discretion of the contractor, replace it or arrange for a repair or a replacement compensation for it to the principal. In case of replacement, the principal is required to return the replaced matter to the contractor and to provide the property thereof to the contractor, unless the contractor indicates differently.
8. If it is established that a complaint is unfounded, then the costs that have arisen from it, including the inspection costs incurred on the side of the contractor, shall be in full for the account of the principal.
9. After the expiry of the warranty period, all costs for repair or replacement, including administration, shipping and show up costs, will be charged to the principal.
10. In deviation of the statutes of limitation by law, the statute of limitation of all claims and defenses towards the contractor and the third parties involved by the contractor in the execution of an agreement shall be one year only.
7. If and to the extent that the principal has insured any risk related to the agreement, he is required to claim possible damage under that insurance and to safeguard the contractor from recourse claims by the insurer.
8. The principal safeguards the contractor against all claims by third parties because of (product) liability as a consequence of a defect in a product or installation supplied by the principal to a third party and that in part consisted of goods developed and/or delivered by the contractor, except if and insofar the principal proves that the damage is caused by those goods.

Article 14. Safeguard

1. The principal safeguards the contractor for possible claims by third parties, that suffer damage in relation to the execution of the agreement and of which the cause can be imputed to others than to the contractor. Under claims of third parties will also be understood recourse claims of the insurer(s) of the principal. If the contractor should receive a claim on that basis by third parties, then the principal is obliged to assist the contractor both in and out-of-court and to do without delay all that may be expected from him in that case. Should the principal remain in default in taking adequate measures, then the contractor, without the requirement of a notice of default, is authorized to proceed to it by himself. All costs and damages at the side of the contractor and third parties emerging there from shall be fully for the account and risk of the principal.

Article 15. Intellectual property

1. The intellectual and industrial property rights on all goods, data (including computer programs) and (technical) information delivered to the principal will remain with the contractor. The contractor has the exclusive right to publishing, realization and multiplication of these goods, data and information and the principal has solely the right of use thereof.
2. The documents delivered by the contractor to the principal, such as designs, drawings or technical descriptions become the property of the principal and may be used by him while respecting the rights that derive from the legislation in the area of the intellectual and industrial property, after the principal has complied with his financial obligations towards the contractor.
3. The right of use of the principal with regard to the programs developed and delivered by the contractor is non-exclusive. The principal may use these programs only in his own company or organization and only for the technical installation for which the right of use has been granted. The right of use may relate to several installations to the extent that it has been recorded in the agreement.
4. The right of use is not transferable. It is forbidden for the principal to make available the programs and the carriers on which they have been recorded in any way to a third party or let it be used by a third party. It is forbidden for the principal to reproduce or have copies made of the programs. The principal shall not change the programs other than in the framework of the repair of errors. The source code of the programs and the technical information produced by the development thereof shall not be made available to the principal unless it has been agreed differently.

Article 13. Liability

1. The total liability of the contractor because of an imputable shortcoming in the compliance with the agreement or on any other basis, there under also explicitly understood every shortcoming in the compliance of a guarantee obligation agreed with the principal, shall be limited to payment of direct damages to the maximum of the amount of the price stipulated for that agreement (excl. VAT). If the agreement is mainly a continuous agreement with a duration of more than one year, then the price stipulated for the agreement is set at the total of the fees (excl. VAT) agreed upon for one year only. In no case will the total liability of contractor for direct damages, for whatever reason, amount to more than € 50,000 (Fifty thousand Euro).
2. The liability of contractor for damage by death, bodily harm or because of material damaging of goods amount to more than € 1,250,000 (one million two hundred and fifty thousand Euro).
3. The liability of contractor for indirect damage, consequential damage, missed profits, missed savings, reduced party goodwill, damage by company stagnation, damage as a consequence of claims of customers of principal, damage related to the use of goods, materials or programs of third parties prescribed by principal to contractor and damage related to the use of suppliers prescribed by principal to contractor is excluded. Also excluded is the liability of contractor because of damaging, destruction or loss of data or documents.
4. The exclusions and limitations referred to in article 13.1 up to and including 13.3 become void if and to the extent that the damage is the result of willful intent or conscious negligence of the management of contractor.
5. Each liability of the contractor becomes void, to the extent something different has not been agreed, by the passing of three months after the time on which the agreement has ended by delivery, dissolution or cancellation.
6. The legal claim on the basis of a defect shall not be valid if the principal has not with proper speed after he has discovered this or reasonably should have discovered, declared the contractor in writing and with a motivation to be in default.

Article 16. Applicable law and disputes

1. The laws of the Netherlands apply to all legal relations to whom the contractor is a party, also if a legal relation is partially or in its entirety executed abroad or if the party involved in the legal relation has his residence there. The applicability to the Vienna purchase treaty is excluded.
2. The court in the place where the contractor has his seat is exclusively authorized to treat disputes, unless the law prescribes differently mandatorily. Nevertheless the contractor has the right to submit the dispute to a court competent according to the law.
3. Parties shall only turn to the court after they have made an utmost effort to resolve a dispute in mutual consultation.

Article 17. Location of the GTC and changes to the GTC

1. These GTC can be found on www.logisch-ia.nl.
2. Applicable is always the latest filed version or the version that was in force at the time of the conclusion of the legal relation with the contractor.