

General Terms and Conditions KWT Holding B.V.

Filed with the Chamber of Commerce Gooi-, Eem- and Flevoland under number 39065080

Article 1: Applicability

1. 'KWT' means KWT Holding B.V. or one of the operating companies that are listed in Annex 1 of these general terms and conditions.
2. These general terms and conditions are applicable to all the offers submitted by KWT and agreements entered into by KWT and to all agreements that may result there from.
3. In these general terms and conditions:
 - "Contractor" is KWT acting as provider or supplier;
 - "Client" is the other party.
4. In the event of a conflict between the contents of an agreement entered into between the Contractor and the Client and these general terms and conditions, the provisions of the agreement prevail.
5. The application by the Client of other general terms and conditions is explicitly excluded.

Article 2: Offers

1. All offers submitted by the Contractor are without engagement and revocable.
2. If the Client does not accept an offer, the Contractor has the right to charge the Client for all the costs that it has incurred in relation to drawing up the offer.
3. When drawing up the offer the Contractor may proceed on the assumption that the information provided by the Client, e.g. calculations and drawings, is correct and that it can base its offer on this information.

Article 3: Delivery time and execution

1. The Contractor fixes the delivery time and/or execution period on the basis of the facts and circumstances known to him at that time.
2. The delivery time and/or execution period are extended by the Contractor, to the extent necessary, in the following situations:
 - in case of (new) facts and/or circumstances of which the Contractor was not aware (yet);
 - if the information provided by the Client, e.g. calculations and drawings, proves to be incorrect;
 - if the design drawings provided by the Contractor are not approved by the Client within ten working days;
 - in case of extra work;
 - in case of a suspension by the Contractor of its obligations; or
 - in case of unworkable weather.

In all situations after an extension of the delivery time and/or execution period, the work will be carried out by the Contractor as soon as its planning reasonably permits so.

3. If the delivery time and/or execution period is exceeded for whatever reason, there is no right to any form of compensation, unless agreed on in writing.

4. In any event the delivery time and/or execution period do not start until :
 - agreement has been reached about all commercial and technical details;
 - all the conditions required for the execution of the agreement have been satisfied; and
 - if applicable, a first (instalment) payment has been received by the Contractor.

Article 4: Changes to the work

1. Alterations to the work shall result in any event in extra work or reduced work if:
 - the design, the specifications or the contract documents are modified;
 - the information provided by the Client proves to be incorrect.
2. The costs of extra work are calculated on the basis of the value of the price-determining factors at the moment the extra work is carried out.
3. In the event of reduced work a discount on the price of the agreement shall be calculated on the basis of the value of the price-determining factors at the time of conclusion of the agreement. If a request for reduced work is made after four weeks have elapsed since the conclusion of the agreement, the discount for reduced work shall be maximized at 20% of the price for the whole agreement. In the event of reduced work the Contractor shall always be entitled to compensation for loss of profit equal to 10% of the price discount owing to the reduced work. This compensation shall be settled directly with the price discount. Materially reduced work shall be considered a partial dissolution of the agreement to which article 17 of these general conditions applies.

Article 5: Force majeure

1. In the event of temporary force majeure the Contractor has the right to suspend its performance of the agreement.
2. Force majeure is caused by circumstances that were not to be expected when entering into the agreement and that are outside the Contractor's sphere of influence. Examples of force majeure situations are weather conditions, (the consequences of) earthquakes, fire, loss or theft of machinery and equipment, materials going lost, strikes, roadblocks, work interruptions, import or trade restrictions and failures in the performance by suppliers and/or subcontractors of the Contractor.
3. When a temporary force majeure situation has continued for six months, the Client is entitled to dissolve the agreement for the part that has not yet been performed.
4. If the agreement is terminated due to force majeure, neither party shall have a right to compensation for the damage, costs and/or losses that arise as a result thereof.

Article 6: Permits

1. It is the Client's responsibility that all permits, dispensations and other individual decisions that are required for carrying out the work, have been obtained in time.

Article 7: Delivery and risk transfer

1. Deliveries are effected Ex Works according to the Incoterms 2010. The risk of the goods passes as soon as they have been made available to the Client.

2. When it has been agreed that the Contractor takes care of the transport of the goods, the Client bears the risks of storage, loading, transport and unloading.
3. In the event of a trade-in or a return the Client carries the risk of the goods in question until they have been put into the possession of the Contractor again.
4. Goods that are made available to the Client but have not been taken delivery of, are stored at the risk and expense of the Client. In such event the Contractor is entitled to sell the goods to a third party.

Article 8: Completion

1. The work is deemed to have been completed if and to the extent that:
 - the Client has approved the work;
 - the work has been put into use;
 - the Client has been notified in writing that the work has been completed, but the Client fails to approve or reject the work within 14 days after the date of this notification; or
 - the Client has rejected the work on account of minor defects or missing parts, which can be repaired or delivered within 30 days and which do not prevent the work to be put into use.
2. If the work is rejected the Client forthwith has to notify this to the Contractor in writing, specifying the reasons.
3. If the work is rejected the Client has to give the Contractor the opportunity to repair the work or to deliver again.
4. The Client indemnifies the Contractor against all claims from third parties in relation to damage to parts of the work that have not been completed yet, caused by the use of the completed part of the work by the Client.

Article 9: Execution of the work

1. The Client guarantees that the Contractor:
 - can perform its work as much as possible without interruption and at the agreed times;
 - has access to the required facilities, e.g. water, electricity, gas, heating and a lockable dry storage room; and
 - can make use of all the facilities prescribed under the Working Conditions Act and other health and safety regulations.
2. If the Client does not meet its obligations as set out in paragraph 1 of this article, the Contractor may postpone the work until the Client meets these obligations. The work is resumed by the Contractor as soon as its planning reasonably permits so. If the Contractor suffers damage, costs and/or losses as a result of this delay, these damage, costs and/or losses will be borne by the Client.
3. The Client is liable for any damage, costs and/or losses resulting from all or any damage to objects, e.g. tools and materials designated for the work, that are at the workplace or at another place agreed on and that belong to the Contractor, the Client and/or third parties, provided this is the result of the damaging, burning, loss or theft of those objects.

Article 10: Price

1. The prices are based on delivery Ex Works according to the Incoterms 2010 and are exclusive of turnover tax.
2. The prices are exclusive of the costs for:
 - hacking, piling, demolition, foundation, ground, bricklaying, carpentry, repair installation or other structural work;
 - packaging;
 - spare parts;
 - special tools;
 - commissioning;
 - (in situ) training;
 - installation supervision;
 - tests and test reports, if more than the FAT (Factory Acceptance Test);
 - connection of electricity, gas, water or other such infrastructural facilities;
 - travelling and accommodation; and
 - limitation and/or prevention of damage to objects that are at or near the work.
3. If after entering into the agreement and before the agreement has been complied with in full, the price of cost price determining factors has risen by more than 10% compared to the moment when the offer was calculated, the Contractor may pass on this difference to the Client. This price increase will be paid by the Client with the next (instalment) payment.

Article 11: Payment

1. Unless agreed otherwise, payment is made at the place of business of the Contractor or into an account designated by the Contractor.
2. Unless agreed otherwise, payment is made in one of the following two manners:
 - A) According to the following scheme:
 - 40% of the total price upon formation of the agreement;
 - 50% of the total price after approval of the design;
 - 10% of the total price upon delivery or completion.
 - B) Within 30 days after the instalment invoice date.
3. At the Contractor's first request the Client has to furnish (in the opinion of the Contractor) adequate security for the payments due under the agreement. If this obligation is not complied with, the Client is immediately in default and the Contractor has the right to terminate the agreement and/or to recover the suffered damage, costs and/or losses from the Client.
4. Except in the event of the bankruptcy or a judicial debt rescheduling of the Contractor, the Client is not allowed to offset any kind of payment under the agreement against an amount payable by the Contractor.
5. The full claim for payment of the Contractor under the agreement is immediately and fully due and payable if:
 - a payment term has been exceeded by the Client;

- the Client is bankrupt or applies for a suspension of payments;
 - the assets of the Client are attached;
 - the Client as a legal entity is wound up or liquidated; or
 - the Client as a natural person is placed under guardianship or dies.
6. In the event of late payment the Client owes a contractual interest of 12% per year on the outstanding amount with immediate effect. If the statutory (trade) interest is more than 12%, this higher interest rate will be applicable. When calculating the interest a part of a month is counted as a full month.
7. In the event of late payment the Client has to compensate the Contractor for its extrajudicial (collection) costs. The extrajudicial (collection) costs will be calculated as follows:
- on the first €2,500 15%
 - on the excess up to €5,000 10%
 - on the excess up to €15,000 8%
 - on the excess up to €60,000 6%
 - on the excess from €60,000 4%

If the extrajudicial (collection) costs actually incurred are higher than the amount that has to be compensated in accordance with the above table, the Client owes these costs actually incurred.

8. If the Contractor wins a case in court or arbitration proceedings, the Client is obliged to compensate the Contractor for all the costs that it has made as a result of these proceedings.

Article 12: Retention of title

1. The Contractor remains the owner of delivered goods as long as all the present and future payments regarding the delivery of goods and work related to such goods, have not been made by the Client yet.
2. As long as the Contractor retains title to goods, the Client is not entitled to encumber those goods in a way that exceeds the scope of its normal business operations.
3. When the Contractor relies on its retention of title, it is entitled to retrieve the goods in question from the Client. The Client will cooperate full in this.
4. If and as soon as the Contractor cannot invoke its retention of title (anymore) as a result of the confusion, accession or deformation of goods, the Client is obliged to give the newly created goods in pledge to the Contractor.

Article 13: Intellectual property rights

1. Unless otherwise agreed in writing, the Contractor is or becomes the exclusive owner of all the intellectual property rights to offers, designs, illustrations, drawings, software, models etc. that it has produced, irrespective of whether costs for this have been charged to the Client.
2. It is not permitted to copy, use or show to third parties the information referred to in paragraph 1 of this article without prior permission in writing from the Contractor. If this provision is violated, the Client owes the Contractor a penalty of €20,000 for each

violation. All of this without prejudice to the statutory rights of the Contractor to compensation.

3. The Client has to return the information referred to in paragraph 1 of this article on demand and within the period specified by the Contractor, without withholding any copy on any data carrier whatsoever. If this provision is violated, the Client owes the Contractor a penalty of €1,500 a day. All of this without prejudice to the statutory rights of the Contractor to compensation.

Article 14: Information

1. The Client is responsible for all the drawings, calculations and designs that it makes available to the Contractor for the performance of the contract.
2. The Client indemnifies the Contractor against all claims from third parties in relation to the drawings, calculations and designs made available by the Client.
3. The Client is responsible for the functional suitability of all the materials prescribed by or on behalf of the Client.
4. The Client is authorized to have the materials examined at its own expense, before they are processed. Any damage, costs and/or losses that the Contractor suffers as a result of this examination, will be borne by the Client.
5. The Client cannot derive rights from information and advice provided by the Contractor that is not directly related to the agreement.

Article 15: Guarantees

1. Unless agreed otherwise, the Contractor guarantees the proper execution of the performance for a period of six months following delivery or completion (“Guarantee period”).
2. If the agreed performance is the delivery of goods, for the Guarantee period the Contractor guarantees the soundness of the delivered goods.

If defective goods are delivered, the Client has to return these goods at its expense to the Contractor. The Contractor will at that time have the choice:

- to repair the goods;
 - to replace the goods; or
 - to credit the Client for a proportional part of the invoice.
3. If the agreed performance (partly) consists in the processing of material supplied by the Client, for the Guarantee period the Contractor guarantees the soundness of the processing carried out.

In the event of unsound processing the Contractor has the choice to:

- carry out the processing again, in which case the Client, if necessary, has to deliver new material at its own expense;
- repair the defect in the processing, in which case the Client, if necessary, has to send (back) the material to the Contractor at its own expense; or
- credit the Client for a proportional part of the invoice.

4. If the agreed performance consists in the carrying out of contracted work, for the Guarantee period the Contractor guarantees the soundness of the delivered construction and the materials used, provided that the Contractor was free to choose them.

If the construction and/or materials delivered are defective, the Contractor replaces or repairs this construction and/or materials. The parts to be repaired or replaced by the Contractor are, if necessary, sent (back) by the Client to the Contractor at its own expense. The disassembly, assembly and travel and accommodation expenses involved in this, will be borne in full by the Client.

5. If the contracted work consists in the installation and/or assembly of delivered goods, the Contractor guarantees the soundness of this work for the Guarantee period.

A defective installation and/or assembly will be repaired by the Contractor. Travel and accommodation expenses involved in this, will be borne in full by the Client.

6. Until it has fulfilled all its obligations to the Contractor, the Client is not entitled to invoke any guarantee whatsoever.
7. The Client and the Contractor may agree in writing that the manufacturer's guarantee will apply to specific parts, instead of the guarantees in this article.
8. The Client shall give the Contractor its full cooperation so that it can meet its guarantee obligations in accordance with this article.
9. The Contractor gives no guarantee whatsoever for defects that are the result of:
 - normal wear and tear;
 - improper use;
 - maintenance that is not or incorrectly carried out; or
 - installation, modification, assembly or repair by the Client or third parties.
10. The Contractor does not give a guarantee for goods that were not new at the moment of delivery, that were prescribed by the Client or that were delivered by or on behalf of the Client.
11. The Contractor gives no guarantee whatsoever for the inspection and/or repair of goods of the Client.

Article 16: Liability

1. The Client can only hold the Contractor liable for any damage, costs and losses suffered as the direct and sole cause of a failure attributable to the Contractor. This liability is in any event limited to the amount that is paid to the Contractor under the applicable insurance.
2. If the insurer of the Contractor does not pay out for whatever reason, if the insurance in question provides no cover or in the absence of an applicable insurance, the liability of the Contractor will in any event be limited to the amount of the net invoice value, exclusive of VAT, of the agreement in question or, if partial deliveries have been agreed on, the net invoice value, exclusive of VAT, of the partial delivery with which the harmful event is most in line.
3. The following damage and loss do not qualify for compensation:
 - consequential loss, e.g. business interruption loss and loss of profits;

- supervision damage, e.g. damage caused during or as a result of the execution of the work to objects on which work is being carried out or to objects in the vicinity of the work site; and
 - damage caused by the intent or deliberate recklessness of auxiliaries or non-supervising subordinates of the Contractor.
4. The Contractor is not liable for damage that is caused as a result of the defective processing of materials delivered by or on behalf of the Client. At the Client's request the Contractor will carry out the processing anew with new material supplied by the Client at its own expense.
 5. The Client indemnifies the Contractor against all claims from third parties by reason of product liability because of a defect in a product that has been delivered by the Client to third parties and that (also) included products and/or materials delivered by the Contractor.
 6. The Client can no longer rely on a defect in the performance if it has not informed the Contractor in writing of the defect within fourteen days after it discovered or should reasonably have discovered the defect.

Article 17: Termination of the agreement

1. If the agreement is dissolved in full or in part by mutual consent at the request of the Client without culpable shortcoming of the Contractor, the Contractor shall be entitled to compensation of all financial loss that it suffers as a consequence of the premature termination of the agreement, which includes losses suffered, loss of profits and costs incurred.

Article 18: Applicable law

1. Dutch law is applicable to all agreements between the Contractor and the Client.
2. The application of the Vienna Sales Convention is hereby excluded as well as the application of any other international regulations of which the application can be excluded.

Article 19: Competent court

1. In the event of a dispute the Dutch civil court of the place of business of the Contractor is competent to hear the dispute, unless this is in conflict with mandatory law. Only the Contractor is allowed to deviate from this rule by applying the statutory rules on jurisdiction.
2. The parties are free to agree on another form of dispute resolution, e.g. mediation or arbitration.
3. In case of a conflict of interpretation the Dutch version of these general terms and conditions shall prevail.

Annex 1, belonging to the General Terms and Conditions KWT Holding B.V. (filed with the Chamber of Commerce Gooi-, Eem- and Flevoland under number 39065080):

Operating companies of KWT Holding B.V.:

- KWT Productie B.V.
- KWT Waterbeheersing B.V.
- KWT Supplies B.V.
- KWTronic B.V.
- KWT Milieu bvba