



## GENERAL TERMS AND CONDITIONS OF SALE OF REGOUT BALANCE SYSTEMS B.V.

### 1 Definitions

For the purposes of these General Terms and Conditions the following terms will have the following meaning, unless expressly stated otherwise:

Contractor: the user of these General Terms and Conditions, namely Regout Balance Systems B.V., with its registered office in Maastricht, the Netherlands, where it has its business address at Industrieweg 40;

Client: the Contractor's other party, acting in the course of a profession or business;

Contract: the Agreement between the Contractor and Client;

Party/ Parties: the Contractor and the Client separately or collectively.

### 2 General

1. The provisions of these General Terms and Conditions shall apply to any offer and any agreement between the Contractor and a Client, insofar as the Parties do not expressly deviate from these Terms and Conditions in writing.
2. The present Terms and Conditions shall also apply to all agreements with the Contractor the execution of which requires calling in third parties.
3. Any deviations to these General Terms Conditions shall only be valid if expressly agreed in writing.
4. The Client's general terms and conditions shall only apply if it is expressly agreed in writing that these shall apply to the Agreement to the exclusion of the present General Terms and Conditions. Any remaining conflicting provisions in the general terms and conditions of the Contractor and Client shall only be applicable then between the Parties if and insofar as they are part of the Contractor's terms and conditions.
5. If any provision of these General Terms and Conditions is null or nullified, the remaining provisions of these General Terms and Conditions shall apply fully. The Contractor and Client shall then confer in order to agree on a new provision to replace the provision that is null or has been nullified, observing the purpose and the purport of the original provision as much as possible.

### 3 Offers

1. Any offer made by the Contractor shall be without any commitment; it shall be valid for a period of 30 days, unless stated otherwise. The Contractor shall only be bound by the offer if its acceptance is confirmed by the Client in writing within 30 days.
2. The delivery conditions included in the Contractor's offer shall always be provisional and indicative, and if they are exceeded this shall not entitle the Client to dissolution or compensation, unless expressly agreed otherwise.
3. The prices included in the Contractor's offer shall always be excluding VAT, government levies, transport costs and possible packaging and handling costs, unless expressly agreed otherwise.
4. If the acceptance on the part of the Client deviates from the offer made by the Contractor, whether or not on points of minor importance, the Contractor shall not be bound thereby. In such case, the Agreement shall not come into existence in accordance with such deviating acceptance, unless the Contractor states otherwise.

5. A compound offer shall not oblige the Contractor to carry out a part of the order at a corresponding portion of the price of the offer.
6. Offers shall not be automatically applicable to repeat orders.
7. Any offer is based on the performance of the Agreement by the Contractor under normal circumstances and during normal working hours.

### 4 Agreement

1. An Agreement comes into existence between Parties at the moment a written contract is signed by the Contractor and the Client, or on the day on which the Contractor receives the Client's written order confirmation (as referred to above in Clause 3.1).
2. Any oral promises by and/or arrangements with employees of the Contractor shall not bind the Contractor until and insofar as they are confirmed by the Contractor in writing.

### 5 Prices

1. Any agreements and any orders included therein shall be concluded on the basis of a fixed price.
2. The Contractor may charge the Client price increases, if he can demonstrate that significant price changes have occurred with regard to for instance exchange rates, wages, raw materials, semi-finished products or packaging material, which could not be foreseen between the moment an offer was made and the time the Agreement was executed.
3. Prices quoted by the Contractor are excluding turnover tax and any other government levies, as well as any costs to be incurred under the Agreement, such as transport costs and possible handling expenses which are based on deliveries in accordance with Incoterms, applicable on the offer date, except where and insofar as otherwise provided in these General Terms and Conditions.
4. The Contractor may charge the Client price increases for ordered Products in case of significant costs increases due to exchange rates fluctuations of more than 10 percent compared with the rates of the date of the sale, or due to increased costs of more than 10 percent with regard to wages, raw materials, third party semi-finished products or packaging material.

### 6 Extra work

1. Extra work shall be considered everything which by mutual agreement with the Client, whether or not laid down in writing, is delivered and/or fitted by the Contractor during the performance of the Agreement in excess of the quantities expressly laid down in the Agreement or the order confirmation or all work carried out by the Contractor in excess of the work expressly laid down in the Agreement or the order confirmation.
2. The Contractor may charge the Client separately for extra work performed by the Contractor as soon as the Contractor knows the amount to be charged in respect thereof. The provisions of Clause 5 above shall apply mutatis mutandis to the calculation of the additional price.



## **7 Drawings, descriptions, calculations, models, etc.**

1. All data stated in catalogues, illustrations, drawings, documents, tables of sizes and weights, etc. are stated by way of indication and shall only be binding if and insofar as these are expressly included in an Agreement signed by the Parties or in an order confirmation signed by the Contractor.
2. If the Client is shown or provided with a sample or a model, such items are assumed to constitute an indication, unless the Parties expressly agree in writing that the items to be delivered shall correspond to the sample or model.
3. The offer made by the Contractor, as well as any drawings, calculations, descriptions, models, tools, etc., manufactured or provided by him in connection with the offer continue to be his property, irrespective of whether or not costs were charged for them. The information contained in all the above or underlying the manufacturing and construction methods, products, etc., is exclusively reserved for the Contractor, even if costs were charged in respect thereof.
4. The Client guarantees that the information referred to above shall be treated confidentially, save in performance of the Agreement, and shall therefore not be copied, shown or disclosed to third parties or used other than with the Contractor's written consent.

## **8 Confidentiality**

1. Both Parties are bound to keep secret all confidential information that they obtained from each other under the Agreement or from another source. Information shall be deemed confidential, if its confidentiality has been communicated by a Party or arises from the nature of the information.
2. If, pursuant to a statutory provision or a judicial decision, the Contractor is obliged to disclose confidential information to third parties designated by law or a competent court, and the Contractor cannot invoke a right to refuse to give evidence laid down by law or acknowledged or allowed by a competent court, the Contractor shall not be liable to pay damages or compensation and the other party shall not be entitled to dissolve the Agreement on the grounds of any damage caused thereby.

## **9 Delivery**

1. Delivery shall be made on the basis of "Incoterms". The "Incoterms" in force at the time of delivery shall apply.
2. If no term of delivery was expressly agreed, delivery shall be made Ex works (EXW).
3. Client shall take delivery of the goods at the time when the Contractor delivers them or has them delivered to him, or at the time when they are placed at his disposal in accordance with the Agreement.
4. If the Client refuses to take delivery or fails to provide information or instructions required for the delivery, the Contractor shall be entitled to store the goods at the expense and risk of the Client.
5. If goods are delivered at the Client's address, the Contractor shall be entitled to charge delivery fees.
6. If the Contractor requires data from the Client for the purpose of performing the Agreement, the delivery time shall not commence until the Client has provided the Contractor with such data.

7. If the Contractor has quoted a delivery period, such period shall be indicative. A quoted delivery time shall therefore never be a strict deadline. If a delivery period is exceeded, the Client shall send the Contractor a written notice of default.
8. The Contractor may deliver the goods in partial deliveries, unless the Parties have made a deviating arrangement by Agreement or unless the partial delivery has no independent value. The Contractor may separately invoice any goods thus delivered.
9. If it is agreed that the Agreement will be performed in stages, the Contractor shall be entitled to suspend the execution of those parts that belong to a next stage until the Client has approved the results of the previous stage in writing.
10. The Contractor has the right to deliver a higher or lower quantity than the exact number of products requested by the Client. Variations in deliveries are allowed up to a maximum of 3% of the quantity agreed to be delivered in accordance with the Agreement, unless otherwise agreed in writing.

## **10 Packaging**

1. The Contractor shall deliver the goods to be delivered under the Agreement in adequate packaging to ensure their undamaged transport in the chosen means of transport without charging any additional costs therefor.
2. Unless intended for single use or stated otherwise, any packing material used in the delivery of goods remains the property of the Contractor. The Client shall return packing material to the Contractor forthwith in a manner designated by the latter. The Contractor may charge the Client for any unreturned or damaged packaging material.

## **11 Passing of risk**

1. The risk of loss of or damage to of the goods which are the subject of the Agreement shall pass to the Client at the time of their legal and/or actual delivery to the Client by which they are brought under the control of the Client or of a third party to be designated by the Client.
2. The provision of paragraph 1 of this clause shall not apply in the case of delivery as referred to above in Clause 9.2. ( ex-works). In these cases, the risk of loss of or damage to the goods that are the subject of the Agreement shall pass to the Client at that moment and not later.

## **12 Payment**

1. Payment shall be made within 15 days from the invoice date, unless otherwise agreed. Payment shall be made in a manner to be designated by the Contractor in the invoice currency. Any objections to the amount of the invoices shall not suspend the Client's obligation to pay.
2. If the Client fails to make payment within the 15-day term, unless otherwise agreed, the Client shall be in default by operation of law. The Contractor shall then have the right to charge the Client interest at a monthly rate equal to the statutory interest applicable in the Netherlands plus 3 percentage points. The interest on the amount due and payable will be charged from the moment that the Client is in default until the moment the amount is paid in full.



3. If the Client's business is wound up, declared bankrupt, subjected to attachment or granted suspension of payment, the Contractor's claims against the Client shall be immediately due and payable.
4. The Contractor may set off payments made by the Client in the first place against the costs, then against the interest due and finally against the principal sum and the accrued interest. The Contractor may refuse an offer to make payment, without being in default as a result thereof, if the Client designates a different order of set-off. The Contractor may refuse full repayment of the principal, if the outstanding and accrued interest and the costs are not paid as well at the same time.
5. If the Client fails to fulfil his obligations to pay or other obligations arising from the Agreement, the Contractor shall be entitled to postpone performance on his part until the Client has met his obligations to pay or fulfilled his other obligations towards the Client.
6. If the Client has not paid the outstanding amounts within 3 months after the expiry of the term of payment, the Contractor shall have the right to terminate the Agreement and to claim compensation for any and all damage suffered and/or to be suffered.
7. The Contractor may periodically invoice the Client for work performed in periods to be fixed in the order confirmation or the Agreement and may also demand advance payment or security for payment from the Client. The Client shall cooperate in these matters on the Contractor's demand.

### **15 Collection charges**

1. If the Client is in default in the fulfilment or timely fulfilment of any of his obligations arising from the Agreement, all reasonable costs incurred by the Contractor in order to obtain payment out of court shall be borne by the Client. The Client shall in any case owe collection charges in the event of a monetary claim. Collection charges shall be calculated in accordance with the collection rates recommended by the Netherlands Bar Association for the collecting business.
2. If the Contractor has incurred higher costs, which were reasonably necessary, such costs shall also qualify for compensation by the Client.
3. Any reasonable judicial costs and execution costs incurred shall also be borne by the Client.

### **16 Inspection, complaints**

1. The Client is obliged to inspect any goods delivered or have them inspected at the time of delivery, but in any case within 14 days thereafter. In this inspection the Client must examine whether quality and quantity of the goods correspond with that which was agreed, or at any rate meet the requirements applying in standard business practice.
2. The Client shall notify the Contractor in writing of any visible defects or shortages within 14 days of delivery. Non-visible defects or shortages<sup>3/4</sup> shall be reported no later than 14 days after the expiry of the guarantee period mentioned below in Clause 16.1.
3. If a complaint is lodged within the period allowed therefor in accordance with paragraph 2 of this Clause, the Client is still obliged to take delivery of and pay for the goods purchased. If the Client wishes to return any defective goods, this shall be done with the Contractor's prior written permission in a manner specified by the Contractor.

### **13 Retention of title**

1. All goods delivered by the Contractor under the Agreement, including the goods referred to in Clause 7 shall remain the property of the Contractor until the Client has fulfilled all obligations, including payment of interest and expenses, under all agreements concluded with the Contractor.
2. The Client is not entitled to pledge or in any other way encumber the goods falling under the retention of title.
3. If third parties attach goods delivered under retention of title or wish to establish or enforce rights thereon, the Client is obliged to inform the Contractor thereof in writing as soon as may reasonably be expected.
4. The Client undertakes to insure and keep insured the goods delivered under retention of title against fire, damage by explosion, water or any another cause as well as against theft and to present the policy of such insurance on the Contractor's demand.
5. Any goods delivered by the Contractor, which, pursuant to the provisions of paragraph 1 of this Clause, fall under the retention of title, may only be resold in the course of the Client's ordinary business operations and may never be used as a means of payment.
6. To provide for the event that the Contractor should wish to exercise his property rights referred to in this Clause, the Client hereby gives the Contractor or third parties to be designated by the Contractor unconditional and irrevocable permission to enter all those places where the Contractor's property is located and to take back such goods.

### **14 Guarantee**

1. The Contractor guarantees that the Agreement will be performed to the best of his ability using due care and adequate workmanship, that the goods to be delivered will meet the customary requirements and standards which may reasonably be set thereon and that they are free from any defects whatsoever.
2. The guarantee referred to in paragraph 1 of this Clause shall apply for a period of 12 months after delivery, unless stated otherwise.
3. The guarantee shall in any case not cover defects occurring in or wholly or partially resulting from:
  - a) Non-compliance with operation or maintenance instructions or any use other than the intended normal use;
  - b) Normal wear and tear;
  - c) Assembly/installation or repairs by third parties, including the Client;
  - d) Application of any government regulation concerning the nature or quality of the materials used;
  - e) Any second-hand materials or goods used in consultation with the Client;
  - f) Any materials or goods that have been made available to the Contractor by the Client for processing;
  - g) Any materials, goods, procedures and constructions, insofar as applied at the explicit instruction of the Client, as well as any materials and goods provided by or on behalf of the Client.
  - h) Any components procured by the Contractor from a third party, insofar as such third party has not issued the Contractor any guarantee.



4. If the Client fails to fulfil any obligation, or fails to fulfil any obligation properly or is late in fulfilling any obligation, which arises for him from the Agreement concluded with the Contractor or from a related agreement, the Contractor shall not be bound to any guarantee whatever named with regard to any of these agreements.
5. If the Client proceeds or causes to proceed to disassembly, repairs or other activities in respect of the product without the Contractor's prior written approval, any claim pursuant to the present guarantee shall lapse.
6. The Contractor will rectify any defects covered by the guarantee referred to under this Clause by repairing or replacing the defective part, whether at the Contractor's company or not, or by sending a replacement part, such at the Contractor's option. All costs that exceed the mere obligation set out in the previous sentence, such as but not limited to transport costs, travelling and hotel expenses, as well as costs for disassembly and assembly, shall be borne by the Client.
7. If the Contractor replaces any components/products in fulfilment of his guarantee obligations, the components/products that are replaced shall become the property of the Contractor.
8. In respect of repairs or servicing activities or other services carried out by the Contractor under a guarantee, only the soundness of the execution of the activities commissioned shall be guaranteed, unless otherwise agreed, such for a period of 6 months following the performance of those activities. Such guarantee comprises the Contractor's mere obligation in the event of faultiness to carry out the relevant activities again, insofar as faulty. The second sentence of paragraph 6 of this clause shall in such case apply mutatis mutandis.
9. No guarantee shall be given in respect of inspections, recommendations and similar activities carried out by the Contractor under an guarantee, whether alleged or otherwise.
10. The Contractor's alleged failure to fulfil his guarantee obligations shall not discharge the Client from the obligations arising for him from the Agreement concluded with the Contractor.
11. If the guarantee given by the Contractor applies to an item that was made by a third party, the guarantee shall be limited to the guarantee period provided by the producer of the item concerned.

## 17 Liability

1. If goods provided by the Contractor are faulty, the Contractor's liability towards the Client shall be limited to that which has been provided in these General Terms and Conditions under Clause 16.
2. If the Contractor is liable for any direct loss, such liability shall be limited to a maximum equal to the value of the part of the Agreement to which the liability relates, at any rate the amount which the Contractor has charged to the Client for the performance of the Agreement, at any rate to a maximum equal to the amount of the payment to be paid by the Contractor's insurer.
3. Direct loss shall mean exclusively:
  - a) The reasonable costs incurred to establish the cause and extent of the loss, to the extent that the establishment relates to loss within the meaning of these General Terms and Conditions;
  - b) The reasonable costs incurred to prevent or limit damage, to the extent that the Client demonstrates that such costs have resulted in limitation of direct loss within the meaning of these General Terms and Conditions.

4. The Contractor shall never be liable for indirect loss, including consequential loss, lost profit, lost savings and loss caused by business standstill.
5. If the Contractor is held liable by a third party, the Client shall indemnify the Contractor against such third party's claims. If one Party is held liable, it shall forthwith notify the other party thereof in writing.
6. The limitations of liability for direct loss included in this Clause shall not apply, if the loss is due to intention or gross negligence on the part of the Contractor or his employees.

## 18 Force majeure

1. The Parties shall not be obliged to fulfil any obligation, if hindered thereto as a result of a circumstance which is not due to negligence, and which cannot be attributed to them either in accordance with the law, a juristic act or according to common opinion.
2. For the purposes of these General Terms and Conditions, force majeure shall mean, in addition to that which it means in the law and in case law, all external causes, whether or foreseen, outside a user's control, but as a result of which the Contractor is not capable of fulfilling his obligations. This includes strikes in the Contractor's business.
3. The Contractor is also entitled to invoke force majeure, if the circumstance preventing fulfilment or further fulfilment commences after the Contractor should have fulfilled his obligation.
4. The Parties may suspend the obligations under the Agreement for the period that the situation of force majeure continues. If this period exceeds two months, each of the Parties shall be entitled to dissolve the Agreement, without any liability to compensate the other party.
5. To the extent that the Contractor has partly fulfilled his obligations under the Agreement or will be able to fulfil such obligations by the time when the situation of force majeure commences and the part already fulfilled or to be fulfilled has an independent value, the Contractor shall be entitled to separately invoice the portion already fulfilled or to be fulfilled. The Client is obliged to pay such invoice as if it were a separate Agreement.

## 19 Disputes

1. Subject to the applicability of paragraph 2 of this Clause and notwithstanding the possibility to request a preliminary injunction from a judge in interlocutory proceedings of the competent court in the district where the Contractor has his registered office, all disputes that might arise in connection with an agreement to which these General Terms and Conditions apply, or in connection with further agreements resulting therefrom, shall be settled to the exclusion of the ordinary court by an arbitration tribunal. Such arbitration tribunal shall be appointed in accordance with the articles of association of the Stichting Raad van Arbitrage voor Metaalnijverheid en Handel [Foundation for the Court of Arbitration for the Metal Industry and Trade], with its registered office in The Hague, and shall make its award with due observance of the articles of association of that Court.



2. Insofar as the disputes set out in the preceding paragraph belong to the absolute competence of the subdistrict court according to rules of Dutch civil procedural law, only the competent subdistrict court shall be able to settle the dispute.
3. The Parties shall not make an appeal to the court or apply to an arbitration tribunal, until they have made every effort to settle a dispute by mutual agreement.

## **20 Applicable law**

1. Dutch law applying in the Kingdom in Europe shall apply to any and all agreements between the Contractor and the Client to which these General Terms and Conditions apply. The United Nations Convention On Contracts For The International Sale Of Goods, 1980 (CISG) is expressly excluded.

## **21 Change, interpretation and location of the Terms and Conditions**

1. These General Terms and Conditions may be changed by the Contractor. Any changes shall only come into effect 30 days after the day on which the Client has been notified of the changes, unless the notification states a later effective date.
2. As from their effective date the amended General Terms and Conditions shall apply to the part of the Agreement between the Contractor and the Client which has not been performed yet.
3. If a Client does not wish to accept an amendment of the General Terms and Conditions, he shall lodge a written notice of objection with the Contractor within 30 days of the notification of the amendment. The original general terms and conditions shall then apply to him, or, if this is unreasonably onerous to the Contractor, the agreement existing between the Parties shall be terminated.
4. The Dutch text of these General Terms and Conditions shall at all times be decisive for the interpretation of their contents and purport.
5. The version which was filed most recently or the version that was applicable at the time of the conclusion of the Agreement shall at all times be applicable.