

MG Energy Systems

General Terms & Conditions



GENERAL TERMS AND CONDITIONS of MG Energy Systems B.V. (Version May 2020)

Article 1. Definitions

- 1.1. In the absence of explicit statement to the contrary, the terms used in these general terms and conditions are defined as follows.

User: MG Energy Systems B.V. the user of these general terms and conditions.

Buyer: The user's other party to the contract, acting in the course of his profession or business, who which the user sells and delivers, and for whom the user renders services should the need arise, etc.

Contract: The contract between the user and the buyer.

Article 2: Scope of Application

- 2.1. These conditions are applicable to all legal relationships between the user and the buyer, including all offers, quotations and agreements between the user and the buyer to which the user has declared these terms and conditions applicable, insofar as these conditions have not been expressly departed from in writing by the parties.
- 2.2. These terms and conditions are further applicable to all contracts with the user that are executed with the assistance of third-parties.
- 2.3. Departures from these general terms and conditions are valid exclusively if expressly agreed in writing.
- 2.4. The applicability of any purchasing or other conditions of the buyer is expressly rejected.
- 2.5. If one or more of the provisions of these general terms and conditions are invalid or set aside, the remaining provisions of these general terms and conditions shall remain applicable in full. The user and the buyer will in that case enter into consultation with a view to making agreement on the substitution of the invalid provisions with new ones that approach as closely as possible the purpose and the tenor of the original provisions.

Article 3. Offers and formation of the contract

- 3.1. All offers made by the user are subject to contract unless an acceptance period has been expressly stated in or in relation to the quotation.
- 3.2. In the absence of agreement to the contrary, the prices stated in the aforementioned offers / quotations are exclusive of VAT and other governmental levies as well as the costs incurred in relation to the contract, including forwarding and administration expenses.
- 3.3. The offer is based exclusively on the information provided for that purpose by the buyer, and the user can rely on the accuracy and completeness of that information. The buyer guarantees the accuracy and completeness of that information.
- 3.4. The contract is formed between the user and the buyer by one of the following methods and Times:
- a) if no order confirmation is sent, at the time at which the buyer expressly accepts in good time and verbally or in writing and in unamended form an offer made by the user;
 - b) if an order confirmation is sent, at the time at which the user takes receipt of the returned order confirmation that was sent to the buyer, signed for agreement;
 - c) or at the time to which the user commences execution of the order on the buyer's request.
- Notwithstanding the above, either party is free to make a case that the contract has been formed by other means and/or at a different time.

Article 4: Execution of the contract

- 4.1. The user will execute the contract with the due care that can reasonably be expected of a good contractor. The user does not however guarantee that a certain result will be achieved.
- 4.2. All deadlines indicated by the user are indicative and are not to be regarded as firm deadlines. Exceeding these deadlines shall not oblige the user to pay any compensation for damages or give the buyer the right to dissolve the contract other than in cases of intentional act or omission or causes on par with gross negligence on the part of the user.
- 4.3. In cases of late delivery the user must be held in default by the buyer before being considered to be in default.
- 4.4. Within a period of 14 days after the order confirmation the user can in written form cancel the order free of charge. After this period cancellation of the order will result in a cancellation fee of 35% of the total order amount.
- 4.5. If and in so far as required for the correct execution of the contract, the user reserves the right to have the work carried out by third-parties.
- 4.6. The buyer shall ensure that the user is provided in good time with all information that the user indicates is necessary and which the buyer could reasonably be expected to realise is necessary to the execution of the contract. If the information required for the execution of the contract is not issued to the user on time, the user reserves the right to suspend execution of the contract and/or to charge the buyer with extra costs incurred as a result of the delay at the current market rates.

Article 5: Delivery

- 5.1. Delivery shall take place ex works/shop/warehouse/factory of the user.
- 5.2. The buyer is obliged to accept the goods at the time at which the user delivers them or has them delivered to him or when they are made available to him in accordance with the contract.
- 5.3. If the buyer refuses to take delivery or fails to provide information or instructions necessary to the delivery, the user shall be entitled to store the goods at the buyer's expense and risk.
- 5.4. The risk of the goods shall transfer to the buyer at the time at which they are legally and/or actually delivered to the buyer and are thus placed at the buyer's disposal or a third-party nominated by the buyer for that purpose.

Article 6: Price and costs

- 6.1. The price is exclusive of VAT and all other costs incurred in the context of the contract.
- 6.2. The user reserves the right to increase that price, in cases where amendments or additions are made to the contract, for example.
- 6.3. The user is further authorised to pass on price increases to the client if cost-determining factors such as salaries or other costs are increased between the time of the quotation and delivery.

Article 7: Payment

- 7.1. Invoices are payable within 14 days of the invoice date in a manner indicated by the user and in the currency stated on the invoice, without deduction, discount or set-off being permitted. Objections to the level of the bills do not suspend the payment obligation.
- 7.2. If the buyer fails to remit payment within the 14-day period, the buyer shall be held in default by operation of law. The buyer shall in that case be liable for the payment of interest equal to the statutory commercial interest rate at that time. The interest over the payable amount shall be calculated from the time at which the buyer was held in default until the time of full and final settlement, in which context part of a month shall be deemed to be a full month.
- 7.3. In the event of the buyer being liquidated, declared bankrupt or granted suspension of payment, the claims of the user on the buyer shall become immediately due and payable.
- 7.4. The user reserves the right to have payments made by the buyer extend first to payment of costs, then to outstanding interest and finally the principal amount and the current interest. The user can refuse a payment offer, without that being in default, if the buyer indicates a different order of allocation. The user can refuse full payment of the principal amount if the due and current interest and costs are not remitted at the same time.

- 7.5. If the user exceeds any payment period the user has the right to discontinue further deliveries to the buyer until the full outstanding amount under all contracts entered into with the user has been paid. The user is in that case further entitled to send subsequent deliveries exclusively on a cash on delivery basis.

Article 8: Retention of title

- 8.1. All goods delivered by the user remain the property of the user until the buyer has met in full all of the obligations under the contract entered into with the user; this to be decided at the user's discretion.
- 8.2. The buyer is not authorised to pledge or encumber in any other way the goods covered by retention of title.
- 8.3. In the event of third-parties imposing an attachment on the goods delivered under retention of title or setting out to establish or invoke any rights to them, the buyer is obliged to notify the user of that as soon as may reasonably be expected.
- 8.4. The buyer is obliged to insure goods delivered under retention of title and to keep them insured against fire, explosion and water damage and against theft and to issue the insurance policy for inspection on demand.
- 8.5. Goods delivered by the user and which are covered by retention of title as provided for under paragraph 1 of this article may only be sold on in the context of normal business operations and may not under any circumstances be used as a means of payment. If the goods are resold, the buyer further undertakes to transfer them under retention of title.
- 8.6. In the event of the user wishing to exercise his property rights as provided for in this article, the buyer hereby gives unconditional and irrevocable permission, now for then, for the user or third-parties engaged by the user to enter the places where the property of the user is located and to repossess that property.

Article 9: Collection costs

- 9.1. All judicial and extrajudicial (debt collection) costs reasonably incurred by the buyer in connection with the consumer's non-compliance or late compliance with his payment obligations shall be for the buyer's account.
- 9.2. The buyer is liable for payment of statutory interest over the debt collection costs.

Article 10: Inspection, complaints

- 10.1. The buyer must notify the user in writing of complaints within three (3) days of establishing the defect. The letter of complaint should contain a description of the failure to perform in as much detail as possible so that the user is able to put forward an adequate response.
- 10.2. If a complaint is well-founded, the user is authorised to decide at his own discretion whether to amend the invoice, redeliver the relevant product or service or reimburse a proportion of the price already paid without continuing to implement the contract.
- 10.3. If the buyer fails to lodge a claim within the period provided for in article 10.1, all of his rights and claims of any nature regarding the subject of the complaint made or which could have been made during that period shall be null and void.

Article 11: Expiry period

- 11.1. Notwithstanding the provisions of article 10, the buyer is obliged if he is or remains of the opinion that the user has failed to implement the contract on time, completely or correctly - unless this is done subject to the provisions of article 10.1 - to notify the user as such in writing and without delay and to exercise his rights to institute claims on that basis within one year of the date of that notification, or within one year of the time at which notification should have taken place, in the absence of which all of his rights and claims in that regard shall lapse upon expiry of the period set forth above.

Article 12: Suspension and dissolution

- 12.1. If the buyer fails to meet any obligation to the user or to meet it in full or on time, if the buyer is declared bankrupt or a request for his bankruptcy is filed at the court, if the buyer has applied for or been granted suspension of payment, if the buyer's company is discontinued or liquidated, if goods of the buyer are subjected to an attachment, or if the buyer is placed under administration or guardianship, the user has the right to suspend compliance with his obligations to the buyer or to dissolve the contract with the buyer in full or in part, without any notice of default or legal intervention being required and without being obliged to pay any compensation for damages, without prejudice to the remaining rights of the user, including the right to claim compensation for damages.

Article 13: Liability

- 13.1. In the event of the user being held liable, that liability shall be limited to the provisions of this clause.
- 13.2. The user's liability for losses suffered by the buyer caused by the late, incomplete or incorrect implementation of the contract shall be limited to a maximum of the invoice amount charged by the user to the buyer for the delivered goods and or the performance of services in which the cause of the loss has occurred. The compensation payable by the user to the client cannot however under any circumstances exceed the amount for which the user's liability is insured, or a maximum amount of amount of the invoice if no cover is provided by that insurance, insofar as that insurance does not provide cover in the case in question. The above is subject to exception in cases of intentional act or omission on par with gross negligence on the part of the user. For the purpose of this and subsequent clauses of this article the user is also defined as the user's employees and third-parties he has engaged for the implementation of the order.
- 13.3. The user cannot be held liable for losses caused by the buyer's failure to meet his obligation to provide information as provided for in article 3.3 unless those losses have been caused by intentional act or omission or causes on par with gross negligence on the part of the user.
- 13.4. Neither can the user be held liable for losses caused by acts or omissions of third- parties engaged by the buyer during implementation of the order, unless those losses have been caused by intentional act or omission or causes on par with gross negligence on the part of the user.
- 13.5. The user is further authorised at all times to maximally limit or reverse the buyer's loss, for which the buyer is obliged to cooperate in full.
- 13.6. The buyer is obliged to limit or, where possible, to reverse his or her loss and that of his or her members.
- 13.7. The user cannot under any circumstances be held liable for indirect losses, including consequential losses, loss of income, missed savings or losses caused by business stagnation. The above is subject to exception in cases of intentional act or omission on par with gross negligence on the part of the user.

Article 14: Warranty

- 14.1. The software and hardware produced and supplied by the user meet the technical requirements and specifications set by Dutch law.
- 14.2. The user will not issue any warranties for goods manufactured by third parties. If the manufacturer has issued a warranty, the buyer must approach the manufacturer directly.
- 14.3. The user warrants each MG Energy Systems B.V. or MG branded products sold by the user or any of its authorized dealers or distributors worldwide, to be free of defects for a period of 4 years from the date of sale. Within the warranty time frame, subject to the issues listed below, user will repair or replace the products and/or parts of the products if the components in question are defective in materials or workmanship.
- 14.4. The warranty does not cover a battery reaching its normal end of life which may occur prior to the warranty periods stated above. Depending on the application a battery can reach its normal end of life before the end of the Applicable Warranty Period. A battery can deliver only a fixed number of usable amp-hours over its lifetime and is considered to have reached its normal end of life if the

- application uses up all of these amp-hours, regardless of the time the battery has been in service. Therefore the user reserves the rights to deny a warranty claim if it determines the battery to be at its normal end of life, even if the claim is lodged within the Applicable Warranty Period.
- 14.5. If the battery is determined by user, in its sole discretion, to be defective for material or workmanship under terms of this limited warranty, it will be replaced or repaired. User's acceptance of any items shipped to user shall not be deemed an admission that the items so shipped are defective. Any items shipped back to user, shall in user's sole discretion, become user's property.
- 14.6. If a battery is replaced by a new battery under the terms of this limited warranty, costs will be charged proportionally to the period of use of the replaced battery.
- Replacement in the 1st year: 0 % of the original purchase price will be charged.
 - Replacement in the 2nd year: 20 % of the original purchase price will be charged.
 - Replacement in the 3rd year: 35 % of the original purchase price will be charged.
 - Replacement in the 4th year: 50 % of the original purchase price will be charged.
- 14.7. User is not obligated to warrant the battery in question if defects are related to damages caused by abuse/neglect, or from the following:
- Damage from shipping, loose terminal bolts or corroded hardware;
 - User codes tampering or removal;
 - Failure to properly install the battery, in addition to keeping the battery properly charged and maintained;
 - Breakage from collision, fire or freezing-which includes damage from extreme heat or cold, improper storage, water damage or tampering, short-circuit, overcharging, deep discharging;
- 14.8. Buyers should adhere to all user's documentation and guidelines. All bolts must be firmly tightened with a torque wrench and NOT by hand to avoid overheating caused by loose connection. User will not be responsible for any expenses related to installation/removal, electrical system tests, battery charging, loss of time of other expenses which should be considered incidental damages, including all shipping charges after the first 30 days of warranty.

Article 15: Indemnification

- 15.1. The buyer indemnifies the user against claims of third-parties regarding intellectual property rights on materials or information issued to the buyer and which are used during implementation of the contract.
- 15.2. The buyer indemnifies the user against claims of third-parties regarding losses related to or arising from the contract implemented by the user if and insofar as the user is not liable to the buyer in that respect by virtue of the provisions of article 13.

Article 16: Force majeure

- 16.1. The parties are not be required to comply with any obligation if prevented from doing so as a result of a circumstance that is beyond their control and for which they cannot be held accountable by virtue of the law, a juristic act or generally accepted views.
- 16.2. In these general conditions, force majeure is defined - in addition to that which is deemed as such by law and legal precedent - as all circumstances, foreseen or unforeseen, that are beyond the control of the user but which prevent the user from meeting his obligations. That includes strikes at the user's business.
- 16.3. No claims for any compensation can be made by the buyer in the event of force majeure.
- 16.4. If a case of force majeure leads to an agreed date or term being exceeded, the buyer has the right to dissolve the relevant contract by means of written notification to that effect. That dissolution shall not extend to goods that have already been delivered; those goods must be paid for by the user with due observance of article 7 of these general conditions.

Article 17: Intellectual property and copyrights

- 17.1. Without prejudice to the provisions of these General Terms and Conditions, the user will retain the rights and powers vested in it pursuant to intellectual property law.
- 17.2. All documents made available by the user, such as reports, recommendations, agreements, designs, video and audio material, photos, logos, software, websites, data files and data carriers, such as CDs, videos, DVDs, software, etc., will be exclusively intended to be used by the buyer and may not be multiplied, sold on, rented out, processed, copied, reproduced, published or disclosed to third parties without the User's prior permission, unless the contrary ensues from the nature of the documents made available.
- 17.3. The user will retain the right to use any knowledge acquired pursuant to the performance of the work for other purposes, to the extent that this does not involve disclosing any confidential information to third parties.

Article 18: Applicable law and disputes

- 18.1. In the absence of mandatory rules of law to the contrary, the court in the user's place of establishment has exclusive competent jurisdiction.
- 18.2. All legal relationships between the user and the buyer to which these general conditions apply shall be governed by the laws of the Netherlands. The Vienna Sales Convention is expressly excluded.

Article 19: Source

- 19.1. These conditions have been filed at the offices of the Leeuwarden Chamber of Commerce under number 60513047.
- 19.2. The most recently filed version or the version that was applicable at the time at which the contract was formulated shall be applicable at all times.