

# SKIL B.V.

General Terms and Conditions of Skil B.V.  
With its registered office in Breda

## I. General Points

- 1.1 These General Terms and Conditions form part of any quotation made by us for and contracts in relation to the undertaking of deliveries and/or services.
- 1.2 Conditions in addition to or that deviate from these General Terms and Conditions shall only be valid if they have been expressly agreed in writing between ourselves and the Counterparty.
- 1.3 We are entitled to amend these General Terms and Conditions at any time.
- 1.4 These General Terms and Conditions shall also govern all future transactions between us and the Counterparty and shall also apply if we perform delivery despite our knowledge of differing or contrary terms.

## II. Definitions

- 2.1 In these General Terms and Conditions these terms shall have the following meanings:
  - 2.1.1 'General Terms and Conditions' or 'GTC': these General Terms and Conditions
  - 2.1.2 'we' or 'us' or 'ourselves': Skil B.V.;
  - 2.1.3 'Counterparty' or 'you': the natural or legal entity to whom we have provided a quotation, or with whom we have entered into a contract.

## III. Quotations/Contract

- 3.1 Any quotation produced by us shall be entirely free of obligation and shall be revocable at all times. The provisions of the aforementioned sentence shall remain in force even though an acceptance period has been expressed therein.
- 3.2 A quotation may only be accepted in writing. In the event that you verbally accept a quotation, you must confirm this in writing by post, unless we have expressly stated in writing that this confirmation does not need to be sent. All accepted quotations are subject to written confirmation by us.
- 3.3 A quotation that we make verbally shall cease to be valid if it is not accepted immediately. Without prejudice to the provisions in paragraph one of this Article, written quotations shall cease to be valid if not accepted within 30 days, except if this period is extended in writing or if a longer period was expressed in the quotation.
- 3.4 Verbal promises made by and agreements with our staff shall only be binding on our part if and in so far as we have confirmed them in writing.
- 3.5 In the event that the Counterparty issues instructions to us without a prior quotation, in whatever form this may take, a contract shall be drawn up in the first instance, if we have confirmed those instructions in writing. If such an instruction is carried out immediately, the invoice shall be deemed to be the order confirmation. In that case, both parties shall regard the contract as having been created at the time at which we began to carry out the instruction.

## IV. Price

- 4.1 The prices stated by us shall be read as exclusive of VAT tax, other costs and levies payable to the government that apply to sale and supply, unless otherwise stated. Installation and/or fitting and/or building-in work shall never be included in the prices.
- 4.2 The prices shall be based upon the known factors that determine the cost price on the date of quotation and shall apply to delivery ex-warehouse. A warehouse shall be understood to be any site used or designated by us for the purpose of storage of goods stock.
- 4.3 In the event that after the creation of the contract, one or more of the factors that determine cost-price change, such as but not limited to prices of raw materials, wages, transport costs and the Euro exchange rate in comparison with other value-dating of the Euro, we reserve the right to amend the prices. We shall be unable to exercise our right to amend prices as referred to in this paragraph within three months of the date on which the contract was concluded, unless otherwise indicated.
- 4.4 We are entitled at all times to amend prices immediately in the event that a factor that statutorily determines cost-price is increased.

## V. Delivery time/Delivery

- 5.1 Delivery time shall take effect on the date of our order confirmation, but not before all details for performance are determined and any other prerequisites to be provided by the customer for the proper performance of the contract are cleared.
- 5.2 The delivery times stated and/or agreed by us shall never be regarded as a strict deadline within the meaning of Article 6: 83 of the Dutch Civil Code, unless expressly agreed otherwise in writing.
- 5.3 In the event that the delivery time is exceeded, this shall not entitle the Counterparty to dissolve the contract in whole or in part, unless we have been given notice of default with a written notice to that effect and we have failed to comply with our obligations within the reasonable period set therein.
- 5.4 In the event that the stated delivery time is exceeded, this shall not entitle the Counterparty in any way whatsoever to compensation for losses suffered by the Counterparty or their third parties, whether direct or indirect.
- 5.5 In the event that the contract concerns multiple items, we reserve the right to have delivery take place in instalments. The Counterparty undertakes to pay the bills relating to the partial deliveries as if they were the individual transactions. The stipulations in this paragraph shall not apply in the event that these are expressly excluded in the contract.
- 5.6 All deliveries shall be made ex-warehouse (FCA, within the meaning of the ICC Incoterms 2010), unless agreed otherwise in writing.
- 5.7 With regard to the delivery time, the items shall be deemed to have been delivered, in the event that testing in our premises has been agreed and if the said items are ready for testing or for collection, once the Counterparty has been informed of the same and in all other cases if they are ready for dispatch.
- 5.8 In the event that the Counterparty does not purchase the items to be delivered at the agreed time, or it is agreed that delivery shall take place upon demand of the Counterparty at one or more times, we reserve the right, in the event that such a demand is not made (in good time), to claim payment for the items for

which delivery at that time was agreed, as well as for the costs arising from storing those goods. The stipulations in this paragraph shall first apply in the event that, following written notice from us in which a reasonable period is granted, the Counterparty fails to comply with its obligation to purchase within this period. The aforementioned amounts due may in that case be demanded immediately.

- 5.9 The items to be delivered by us shall be transported at the expense and risk of the Counterparty, unless delivery '*franco*', including insurance has been agreed.
- 5.10 Any risk associated with the items to be delivered shall be borne by the Counterparty from the time of delivery.

## VI. Obligation to examine/complaints

- 6.1 The Counterparty undertakes to examine the delivered items immediately after delivery. We must be informed of any externally visible damage or defects immediately in writing, stating the general nature of the damage or defect as well as our packing slip number. In the case of damage or defects that are not immediately visible, a notification period of 7 days after delivery, not including Sundays and generally recognised public holidays, shall apply. In all other cases, the Counterparty shall be deemed to have received the items in the condition stated in the delivery document.
- 6.2 Once the period stated in paragraph 6.1 has elapsed, the Counterparty shall no longer be able to invoke the circumstances referred to in that paragraph against us. In such an event, all rights of the Counterparty shall automatically cease at the same time, except for the obligations on our part to provide a guarantee service in accordance with the provisions of Article VII (VII (guarantee)) in the event and in so far as a shortcoming in the stated features within the meaning of Article 7.1, occurs, which the Counterparty reasonably could not have or should not have discovered within the period stated in paragraph 1.
- 6.3 Shortcomings of minimal significance, by which we mean those that do not or hardly affect the anticipated use of the delivered items, shall not be deemed to be circumstances as referred to in paragraph 6.1 of this Article.
- 6.4 If the notification of a defect is unjustified we shall be entitled to demand compensation from the customer for any expenses we have incurred.

## VII. Guarantee

- 7.1 We guarantee that all items that we deliver, in view of the nature of those items, fulfil the usual requirements of reliability and are fit for purpose in accordance with the features that we stated in writing.
- 7.2 A failure to fulfil the guarantee referred to in paragraph 1 that occurs within the guarantee period shall entitle the Counterparty to the repair or replacement of the item, such at our discretion, in accordance with the provisions of this Article, subject to the proviso that the fault is exclusively or mainly the immediate consequence of defective construction or unsound materials, as well as faulty fitting or installation that is exclusively or mainly the immediate consequence of faulty workmanship on the part of our employees.
- 7.3 With regard to the defects covered by the guarantee within the meaning of this Article, we undertake to repair or replace the faulty component free of charge within our company or a site designated by us where the repairs are carried out, or to send a component for replacement, all of this being subject to our choice. The defects referred to in this paragraph must be reported to us in writing as soon as possible but no later than 8 days after they were discovered, accompanied by detailed substantiation. In the event that we opt to repair the item(s), these must be

sent carriage paid by the Counterparty in consultation to the stated site of repair. In the case of faulty fitting or installation, we undertake to remove the faults in so far as they are faulty. In the case of the absence of features referred to in paragraph 1, we undertake to adapt the items concerned in such a way that these features are put in place. Any further obligation than the one described in this paragraph shall be excluded, specifically but not limited to costs of transport, travel and accommodation costs, as well as costs of disassembly and assembly.

- 7.4 In the event that we replace items or components thereof in fulfilling our obligations under the guarantee, the replaced items or components shall become our property.
- 7.5 Any obligation under the guarantee shall lapse, in the event that: - the items have been or are being used improperly or for a purpose other than for which they are intended; - the directions for use and maintenance and/or the directions for building or assembly, if applicable, have not been observed; - unprofessional repairs have been carried out or non-original components have been fitted into the items; - changes have been made to or within the items and/or the unique item numbers or registration numbers have been rendered unrecognisable or have been removed; - the original proof of purchase stating the date of purchase and product description cannot be produced.
- 7.6 The guarantee shall not cover faults that (i) occur in items or components obtained by us from third parties, unless we have stated otherwise in writing, or (ii) occur in parts that are subject to wear and tear from use or other natural wear and tear, or defects in items that can be attributed to wear and tear as a result of use or natural wear and tear.

We assume no liability for the quality of the product based on the design or choice of material insofar as the customer stipulated the design or material.

Claims on account of defects including claims to recourse by the customer shall be excluded insofar as the customer has had the defect remedied by a specialized workshop/service station not authorized by us.

- 7.7 Unless expressly proven or agreed otherwise, the guarantee period shall be 6 months following the date of first use, but no more than 12 months after the date on which the items were made available to the Counterparty, unless a different period is stated in the guarantee certificate enclosed with the product concerned. The guarantee period that applies to repair or delivery of a replacement shall end on the same date as the period that applied to the guarantee on the original delivery, however without being shorter than 6 months. Once the guarantee period has expired, this shall cause any obligation and liability on our part to cease.
- 7.8 The alleged failure on our part to comply with our obligations under the guarantee shall not release the Counterparty of its obligations arising from any contract that it entered into with us. In the event that a claim is made under the guarantee, this may not in any case whatsoever result in the dissolution of the contract by the Counterparty.
- 7.9 Our obligations and liability and the rights of the Counterparty by virtue of the guarantee shall be limited to that which is stipulated in this Article in this regard.

## VIII. Payment/Payment of interest/Charges

- 8.1 Payment must have been made by no later than 30 days after the invoice date, unless agreed otherwise in writing.
- 8.2 Payment must be made without discount, deduction of costs, compensation or adjustment to our office address or to a bank or giro account designated by us.

- 8.3 The date of payment shall be the time when we have received payment of the amount and it has cleared.
- 8.4 In the event that payment is not made within the agreed period, the Counterparty shall by the mere elapsing of the payment period be in default, thus without any notice of default being required. In such an event, we shall be entitled from the due date to charge an interest payment equal to 4 percentage points above the applicable deposit rate of the European Central Bank, as well as all legal and other costs incurred in the collection of the amount due to us. Without prejudice to our right to claim the actual legal and other costs from the Counterparty and our obligation to provide evidence of this with regard to the latter costs upon a request to this effect from the Counterparty, an amount equal to 15% of the outstanding amount due shall be charged in all cases for the other costs associated with collection.
- 8.5 Any complaint pertaining to an invoice must be submitted to us, stating reasons for the complaint, by registered letter within 7 working days of having received the invoice. The filing of a complaint shall not release the Counterparty of its obligations with regard to payment.
- 8.6 In the event that the Counterparty fails to fulfil any of its payment obligations towards us, we reserve the right to suspend the (further) performance of the contracts, without prejudice to our rights to dissolve the contracts and to claim for losses.
- 8.7 A dispute between ourselves and the Counterparty that does not affect the nature of the contract shall not entitle the Counterparty to suspend its payments to us.
- 8.8 We shall be entitled to settle claims that can be stated in monetary terms using payments that we are to make to the Counterparty for whatever reason.

#### **IX. Retention of title**

- 9.1 All items delivered and/or provided and/or still to be delivered by ourselves to the Counterparty shall remain our property so long as the Counterparty has not fully performed duties on its part with regard to the items delivered and/or to be delivered by pursuant to the contract and/or work carried out or to be carried out for the Counterparty pursuant to such a contract and/or amounts due including related interest payments, charges and penalties due to failure to comply with any contract that was entered into with us. The Counterparty shall be liable for damage to the items that are kept under its supervision and that are still our property.
- 9.2 Where there are grounds for doing so, we shall be entitled to have unimpeded access to the site where the items are located and the Counterparty shall lend us its full cooperation in enabling us to exercise the retention of title stated in the previous paragraph by repossessing the items.
- 9.3 The stipulations in paragraph 1 shall be without prejudice to the right of the Counterparty to sell the items delivered by us within the scope of its normal business activities.
- 9.4 The Counterparty shall be unauthorised in all cases to place the items subject to retention of title in the possession of a third party in a different way and/or to lend the items for use or for consumption and/or to encumber them in any way whatsoever.

#### **X. Force majeure**

- 10.1 Force majeure shall be understood to be a shortcoming that temporarily or permanently prevents compliance with an obligation arising from a contract and that cannot be attributed to ourselves, due to the fact that it cannot be attributed to culpability on our part, nor can we bear the expense for it by virtue of law, legal act or generally accepted practice. A non-attributable breach shall in any case be deemed to have occurred if it is the result of any cir-

cumstance occurring independently of our will, even though it could have already been foreseen at the time when the contract was concluded. Such circumstances include: war and similar situations, riot, government measures, strikes, exclusion of workers, fire and serious damage in our company, hindrance by third parties, or non-compliance, failure to comply in good time or inadequate compliance in work undertaken by our suppliers.

- 10.2 All of our obligations shall be suspended for the duration of force majeure, without any obligation on our part to pay for losses.

#### **XI. Liability/Indemnity**

- 11.1 Our liability by virtue of all contracts pertaining to all items delivered by us or work performed by us shall be limited under the condition of compliance with the obligations under the guarantee described in Article VII of these General Terms and Conditions.
- 11.2 With the exception of fraud, intentional acts or omissions and/or gross negligence on our part and with the exception of the provisions in paragraph 1, any liability on our part, such as for business losses, other indirect losses and losses as a result of liability towards third parties shall be excluded.
- 11.3 In the event that we provide assistance in the fitting, installation or commencing operation of the items delivered by us, thus without us having been instructed to carry out one or more of these activities, this shall always be at the risk of the Counterparty.
- 11.4 We shall provide advice of whatever nature and in whatever form to the best of our knowledge. However, we shall accept no liability in this regard.
- 11.5 In all cases of liability on our part, any damages are limited to the replacement of the item in question. If replacement of the item in question is not possible, the Counterparty will be entitled to damages up to a maximum sum of the value of the contract at hand. In any case, the maximum amount of damages will be limited to the amount that our liability insurance covers and pays out in the particular case.
- 11.6 Except in cases where we have expressly promised the Counterparty in the General Terms and Conditions that we will indemnify them, the Counterparty shall undertake to indemnify us in respect of all other claims from third parties arising from and/or in connection with the performance of the contract.

#### **XII. Diagrams, calculations, specifications, models, tools and so forth, intellectual property rights**

- 12.1 Details stated in catalogues, images, diagrams and specifications of dimensions and weight etc. shall only be binding in the event that and in so far as these are expressly included in a contract signed by the parties or in an order confirmation signed by us.
- 12.2 The quotation that we produce, as well as the diagrams, calculations, software, specifications, models, tools and so forth shall remain our property, irrespective of whether charges have been made for them. The information that is contained in all of these and/or forms the basis of the manufacture and construction methods, products and so forth shall be reserved exclusively for ourselves, even if charges have been made for them. The Counterparty shall guarantee that the information referred to shall not be copied, shown to third parties, published or used without our written permission, except for the purpose of performing the contract.
- 12.3 A contract between ourselves and the Counterparty shall not extend to the transfer of any intellectual or industrial property right, such as but not limited to, copyright, patents, trademark right, rights to drawings and models or know-how.

12.4 In so far as an item delivered by ourselves contains software or we make software available together with the delivery of items, the Counterparty shall only be entitled to use it (i) in connection with that item, (ii) in accordance with specifications and instructions delivered with it and (iii) furthermore in so far as it is necessary for what is deemed to be normal use of the item, which is apparent from the written specifications that we provide.

12.5 Unless we expressly state otherwise in writing, the right of use referred to in paragraph 12.4 shall be solely transferable to the third party that is given possession of the same item with which the software is made available, on condition that (i) the Counterparty guarantees that any third party provides written acceptance of and complies with the stipulations in this Article and (ii) the Counterparty ceases any use of the item and the software once the item has been transferred.

12.6 We will indemnify the Counterparty against claims from third parties that items and/or software that we supplied to the Counterparty or the use thereof that we permitted, infringe upon copyright or patents that are recognised by a State forming part of the European Economic Area, on condition that:

- the Counterparty uses the item and/or software in the agreed manner;
- the Counterparty lends all reasonable cooperation within the scope of indemnification;
- the Counterparty does not make any promises or make any statements that we would deem objectionable;
- the infringement was not caused (i) by an item and/or software that we have developed to the specification of the Counterparty, or (ii) due to the item and/or software being used in conjunction with other software or items that were not supplied or made available by ourselves;

The stipulations in Article XI shall continue to apply in full to our obligation to pay compensation for losses. We shall have no other obligations with regard to (alleged) infringements upon intellectual and/or industrial property rights in respect of the Counterparty than those that are laid down in this paragraph.

### **XIII. Suspension**

13.1 In the event that the Counterparty is in default of fulfilling and/or fulfilling in good time any obligation that arises on its part from the contract concluded with ourselves or any other related contract, or from contracts that have been concluded as part of the long-term relationship between ourselves and the Counterparty, we shall be entitled to immediately suspend our obligations without giving notice of default and without judicial intervention until the time at which the Counterparty has paid what is due in full.

13.2 In the event of suspension by virtue of paragraph 1, we shall be entitled to demand immediate payment and/or an assurance that we deem satisfactory from the Counterparty.

13.3 In the event that circumstances that we become aware of give us good reason to fear that the Counterparty will not (be able to) comply (in good time) with its obligations, we shall be entitled to proceed to demand full payment and/or assurance of compliance from the Counterparty prior to performing the contract.

13.4 We shall also be able to invoke our right to suspension against the Counterparty's creditors.

13.5 In the event that the Counterparty has not paid the sale price of an item that was delivered to it, we are entitled to demand the return of this item within a six-week period after the sale price has become due or within sixty days to be calculated from the day on which the item has been stored and is in the custody of the Counterparty or in the custody of a party on its behalf, by means of a written notice addressed to the Counterparty.

13.6 This written notice causes the sale to be undone and all rights of the Counterparty and/or its successors with regard to the reclaimed item shall cease.

### **XIV. Conversion**

14.1 In the event that a stipulation in these General Terms and Conditions or in a contract is void or nullified, a valid stipulation shall replace it by operation of law, which aims to cover the scope of the void or nullified stipulation as closely as possible.

14.2 The circumstance referred to in the previous paragraph shall not affect the validity of the other provisions of these General Terms and Conditions and/or the contract.

### **XV. Dissolution**

15.1 In addition to the provisions in the law, one party is entitled to dissolve the contract out of court with immediate effect without notice of default and obligation to pay compensation for losses, in the event that:

- the Counterparty is granted a moratorium or a request is made to that effect;
- the Counterparty is declared insolvent or a request is made to that effect, or
- third parties have levied an attachment against the Counterparty or have been granted permission to do so;

15.2 In addition to the provisions in the law, we are entitled to dissolve the contract out of court with immediate effect without notice of default and obligation to pay compensation for losses, in the event that:

- the Board, the shareholders or the control over the Counterparty is significantly changed;
- the Counterparty continues to be in default of complying with one or more of its obligations in these General Terms and Conditions and/or contract following a reasonable period in which to comply, stated in the written notice of default, and still does not fulfil its obligations within one month.

### **XVI. Disputes**

16.1 In the event of a dispute between ourselves and the Counterparty, we will attempt to resolve this in mutual consultation. If it emerges that it is not possible to settle a dispute out of court as referred to above, it shall be settled in the manner stipulated in paragraphs 2 or 3 of this Article.

16.2 Any dispute arising from and/or in connection with these General Terms and Conditions and/or contracts that are partially or wholly subject to the present General Terms and Conditions, will, notwithstanding an appeal, be settled by the competent court in Amsterdam, with the exclusion of any other court.

16.3 The stipulations in the previous paragraph shall be without prejudice to our right to institute legal proceedings on our part before the court that would be competent in accordance with the statutory provisions.

### **XVII. Applicable law**

17.1 Any legal relationship between ourselves and the Counterparty shall be governed by Dutch law, with the exclusion of the application of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention).