

## **GENERAL TERMS AND CONDITIONS HERWEY sprl**

### ARTICLE 1 - Part of the agreement

These terms and conditions, which do not contain any stylistic clauses, form an integral part of all the agreements between HERWEY BVBA and its customer, co-contracting party, either as a purchaser or principal of a purchaser or as the principal of a service(s) or works provider.

They are applicable, unless HERWEY BVBA expressly agrees in writing, to the exclusion of all general terms and conditions appearing on the customer's documents, even if these documents are of a more recent date. By placing an order or entering into an agreement with HERWEY BVBA, the customer declares to have read and accepted the present general terms and conditions and acknowledges that they are in accordance with all the current and mandatory provisions and fundamental rights.

If one or more of the present provisions should be declared definitively unenforceable or null and void, this shall not affect the other provisions and the relevant unenforceable and/or invalid provisions shall be deemed to be null and void, or the interpretation thereof shall be replaced by the provision which, within the legal limits of the law, achieves the same or a nearer but legally acceptable effect as the unenforceable or void provision.

The titles of the articles of these general terms and conditions are purely indicative.

If HERWEY BVBA and the customer have agreed on special conditions in any other document, these will be valid and shall apply in addition. In the event of any conflict, the special terms and conditions shall take precedence.

### ARTICLE 2 - Quotations

All proposals, catalogues, brochures, price lists, information and technical data sheets of all kinds provided to the customer do not constitute an offer and are in no way binding on HERWEY BVBA.

All specifications and offers made by HERWEY BVBA are subject to change and are made without any commitment. They are only valid for 15 days unless another period is expressly stipulated. All prices are in EUR/€. Quotations are only approximate in terms of quantities.

HERWEY BVBA reserves the right to check the quoted quantities against actual consumption when the work is carried out and to charge for the work done, and to invoice for the work actually carried out.

V.A.T., if applicable, is not included in the price offer unless otherwise stated, but it is charged on the basis of the price of the work. Unless otherwise stated, any V.A.T. due is charged on the invoice and is at the expense of the customer. The prices quoted by HERWEY BVBA are quoted exclusive of all other costs, such as the loading and unloading costs, transport and insurance costs, etc.

Unless otherwise stipulated, all work in connection with the installation connection and commissioning, nor any work or materials in connection with the protection and packaging are included in the quotation.

HERWEY BVBA cannot be held responsible for any consequences resulting from an incorrect statement by the customer or incomplete communication of necessary data pertaining to permits or documents as stipulated in article 5.

All appendices, plans and diagrams of material that are attached to an offer or specifications are for information purposes only and are not binding on HERWEY BVBA in any way whatsoever. Orders placed by the customer are irrevocable. They are only binding upon HERWEY BVBA by written confirmation, by an explicit agreement or by execution.

Agreements made by one of our representatives shall only be binding once and insofar as they have been confirmed in writing by an authorised representative of HERWEY BVBA. Representatives and commercial representatives of HERWEY BVBA are not authorised to validly bind the company and, except in special cases, can receive no payments or advances.

When the order is confirmed by HERWEY BVBA, the customer must read it and notify HERWEY BVBA immediately of any inaccuracies. If any non-conformity is not reported within 8 days of the date of confirmation, the confirmation will irrefutably be assumed to be identical to the customer's order, and the contract will be deemed to have been concluded at the registered office of HERWEY BVBA.

Any change proposed or made by the customer to the original agreement can be accepted by HERWEY BVBA provided that it is possible to amend the originally formulated conditions, including those relating to the price, payment terms, the execution period, etc. A rejection by HERWEY BVBA of the proposed change will not affect the original agreement. Each change to an order or to the initial offer shall release HERWEY BVBA from its original promised or agreed delivery or execution period.

When the quantities indicated in our tender prices are not ordered by the customer HERWEY BVBA reserves the right to increase the unit prices. Estimates and tenders are based on the wage, tax and social security rates in force at the time they are drawn up. The prices quoted are based on the prevailing values of wages, taxes and the cost price of materials, raw materials, energy, transport etc. In case of changes in these values, HERWEY BVBA reserves the right to adjust prices proportionally up to the point of invoicing, even after the order has been placed and confirmed in writing by HERWEY BVBA. This price adjustment option shall also apply to materials imported or purchased from third parties. This price adjustment may, at HERWEY BVBA's discretion, be calculated on the basis of the following formula:

$$p = P (0,40 \times s/S + 0,40 \times i/I + 0,20)$$

p: revised amount

P: amount of work carried out

S: average hourly wage set by the National Joint Committee for the Construction Industry in force on the 10th day preceding the submission of the tender and increased by the total percentage of social security contributions accepted on that date by the Ministry of Transport and Infrastructure

s: hourly wage as recorded during the works for which payment is requested, increased by the aforementioned total percentage assumed at that time

I: monthly index established by the Building Materials Price List Commission as in force on the 10th day preceding the submission of the tender

i: index figure as recorded during the works for which payment is requested The acceptance of orders by HERWEY BVBA always takes place under the suspensive condition that the materials ordered are in stock in their warehouses.

### ARTICLE. 3 – Performance

The agreed execution and delivery deadlines are always indicative. If they are exceeded, the customer cannot claim compensation, nor can he proceed to claim dissolution of the agreement. In the event of additional work, the execution time will expire or be extended depending on the nature and scope of the additional work at the discretion of HERWEY BVBA.

When advance payment is stipulated in the offer, HERWEY BVBA is only bound to carry out the order or the work after this has been paid. Unless otherwise stipulated, the deadline shall be expressed in working days. The following are not counted as working days: Saturdays, Sundays and public holidays, annual holidays, compensatory rest days, days on which weather conditions or the effects thereof prevent work being carried out for at least four hours, days of strike or lock-out.

When HERWEY BVBA, due to a cause beyond its control or as a result of force majeure, is unable to meet an indicative execution or delivery deadline, it may, without being obliged to do so, either postpone the deadline or extend the deadline at any time by means of a simple written notification, or revise the terms of the agreement, or terminate the agreement without penalty. The extension of time limits in the event of unattributable working days or in the event of force majeure is extended by 5 working days for the restart.

All circumstances that were reasonably unforeseeable at the time the offer was submitted and/or which are unavoidable and/or which make the execution of the agreement financially or otherwise more onerous or more difficult than normally foreseen will be regarded as cases of force majeure.

The execution of the agreement by HERWEY BVBA will always be subject to the suspensive condition that the ordered materials can be available in the normal way. The services rendered by HERWEY BVBA are irrefutably deemed to have been accepted either by signing a receipt or by the use or resale of part or all of the materials supplied, or by the complete or partial commissioning of the executed works or by whole or partial payment of the delivered performances.

Materials shall be deemed delivered when they, or the significant parts thereof, are ready for use in the factory or when they have been submitted for approval, respectively for collection or dispatch, after HERWEY BVBA has informed the purchaser of this in writing.

If the purchaser does not collect the materials within 15 days of the agreed or notified deadline, HERWEY BVBA shall have the right to consider the agreement to be terminated at the expense of the customer, without prejudice to the right to claim compensation (including compensation for termination) at the customer's expense.

If it is agreed that delivery will not take place at HERWEY BVBA's premises, HERWEY BVBA shall be free to choose the time and place of delivery at the customer's premises (delivery shall always take place outside and on the ground floor) unless expressly agreed otherwise. The purchaser is obliged to store the materials in a safe place.

Each delivery and/or assembly is to be regarded as a separate transaction. This means that complaints relating to a certain performance do not affect previous or future performances.

Additional work carried out shall be invoiced at the hourly rate applicable at the time of execution or at the rates on the price list of HERWEY BVBA for the materials, unless otherwise agreed in writing. The customer declares to have been informed of HERWEY BVBA's current hourly rates and price list. The current hourly rates and price lists can be requested from HERWEY BVBA at any time.

The execution of additional work is an effort commitment on the part of HERWEY BVBA, regardless of the result achieved unless otherwise agreed in writing. HERWEY BVBA can always subcontract the delivery of materials, services and works to a subcontractor without the customer being able to put forward any objections. The customer cannot transfer or outsource any obligations or rights nor assign (additional) work to a subcontractor.

#### ARTICLE 4 - Suspension of the execution of works

If the execution period is suspended by the customer or by third parties who work on the customer's behalf, HERWEY BVBA shall no longer be bound by the stipulated or agreed execution. Once the cause of the suspension of the works has been resolved, HERWEY BVBA itself shall determine when the works can be resumed, without any compensation for delay in execution being due.

When HERWEY BVBA suffers damage, directly or indirectly, due to the suspension, this may be recovered in full from the customer. A suspension that lasts longer than 30 calendar days may be viewed by HERWEY BVBA to be a breach of contract on the part of the customer, to which the provisions of Article 11 shall apply in full.

#### ARTICLE 5 - Customer's obligations

The customer shall inform HERWEY BVBA in writing, before the commencement of the work or delivery, of any obstacles that may arise, among other things, the location of underground pipelines and utilities, cables, septic tanks (or any other damaging elements) and this on the basis of a detailed plan. Failing this, HERWEY BVBA shall under no circumstances be held responsible, and the customer shall fully and unconditionally assume responsibility against third parties.

The customer is responsible for the accessibility of the site and the load-bearing capacity of the roads to be used. In case of lack of accessibility of the construction site, causing a delay of trucks and/or machines for more than 30 minutes, or in the absence of a detailed plan or if the communicated plan does not correspond to reality, only the customer is liable for any resulting damage, including compensation for delay or stoppage of the work. The customer shall be liable for compensation for any delay of more than 30 minutes by lorries and/or machines on the site.

In application of the relevant legal provisions, the customer is responsible for the appointment of a safety coordinator and obtaining all the necessary permits. The offers made by HERWEY BVBA do not include all the costs and fees involved in this or the provisions imposed by the safety regulations unless otherwise specified. Consequently, these costs and fees, as well as these facilities, are to be paid for directly by the customer or, if necessary, passed on to the customer by HERWEY BVBA.

The customer is solely responsible for providing all necessary permits and documents that may have some connection with the work to be carried out by HERWEY BVBA, such as contracts with third parties, measurement reports, specifications, plans, asbestos inventory, specific safety regulations, environmental permits, safety regulations on the construction site, demolition permits, technical report, declaration of conformity of the soil to be excavated, etc. and must submit these to HERWEY BVBA prior to the preparation of the offer. HERWEY BVBA is not responsible for errors or omissions in these documents or permits. The customer declares that they will, fully and unconditionally, indemnify HERWEY BVBA against any claim that it may receive in this respect.

If HERWEY BVBA suffers damage due to non-compliance with one of these, HERWEY BVBA shall be entitled to reclaim the whole of the loss from the customer.

#### ARTICLE 6 – Delivery

The works carried out by HERWEY BVBA are irrefutably deemed to have been provisionally delivered either by the signing of a work order or by the commissioning of all or part of the executed works or the full or partial payment of the executed works.

The customer hereby immediately acknowledges that the works are executed by HERWEY BVBA in accordance with the rules of the trade and that the work has been accepted. The final acceptance shall automatically and tacitly take place no later than one year after the provisional acceptance. HERWEY BVBA's ten-year liability as a contractor, as stipulated by law, shall commence on the date of provisional acceptance.

#### ARTICLE 7 - Payment

The services rendered and materials supplied are payable in cash, regardless of the preparation and sending of invoices. Payments received are first allocated to the expired interest, damages and collection costs that have fallen due, then on the principal amount of the oldest, and this regardless of any remark(s) or indication(s) by the customer on the occasion of his payment(s).

The amount of the invoice must be paid net. All costs such as bank charges are to be borne by the customer. Cheques and bills of exchange are only considered payment after they have been redeemed. The supplying and/or acceptance of bills of exchange or other negotiable documents does not imply novation and does not constitute a deviation from the general terms and conditions. The costs of accepting bills of exchange are to be borne by the customer. There is non-payment as soon as one overdue invoice has not been paid in full on the due date.

Non-payment shall automatically make the balance on all other invoices, even those not yet due, or invoices for which a payment term has been granted shall be immediately due and payable ipso jure. In the case of any non-payment on the part of the customer, HERWEY BVBA shall also be entitled to regard all other contracts with the customer as cancelled at the customer's expense, with the right to the indemnities provided for in these general terms and conditions.

Every invoice that has not been paid on the expiry date shall by law and without a reminder accumulate interest of 1% per month, whereby a part of a month counts as a whole month, until the day of full payment. Any discounts allowed shall lapse in the event of late payment.

In the event of non-payment or the non-fulfilment of any obligation whatsoever, irrespective of the interest, a fixed compensation shall be due by law and without prior notice of default as follows compensation shall be due as follows:

- 10% on the first tranche up to € 25,000.00
- 8% on the tranche from € 25,001.00 up to and including € 35,000.00
- 6% on the tranche from € 35.001,00 up to and including € 50.000,00
- 5% on the tranche from € 50,001.00 up to and including € 100,000.00
- 3% on the tranche from € 100,001.00.

The cost of each notice of default sent by the customer shall be a fixed sum of € 25.

HERWEY BVBA is also entitled to the reimbursement of all costs such as collection charges and legal costs, and to pay the lawyer's fees for both extrajudicial and legal proceedings. These costs are not included in the lump sum compensation.

HERWEY BVBA is entitled to obtain partial payment for the delivery of materials, works and services in proportion to their execution, including from the moment of notice from HERWEY BVBA that the materials can be collected. HERWEY BVBA has the right at any time, as in the case of non-payment, acts of judicial execution against the customer, the receipt of unfavourable solvency or commercial information regarding the customer, before, during or after the works to demand a guarantee from the customer or to suspend the execution of the agreement, until such time as a satisfactory solution has been found. In the event of failure to do so, HERWEY BVBA may terminate the agreement without compensation, and the customer shall be obliged to pay for the deliveries or works already carried out.

In the case of late payment of the invoice(s) by the customer, HERWEY BVBA reserves the right to declare any granted discounts expired, even retroactively with regard to the discounts that were granted to the customer up to one year prior to the last discount granted to the customer.

Under no circumstances may the incomplete or partially disputed delivery serve as a pretext to postpone payment of the part which was not disputed. Unless expressly authorised by HERWEY BVBA, no deductions shall be made for the purposes of the guarantee.

#### ARTICLE 8 - Disputing the invoice

Disputes against the invoice must be made in writing, supported by reasons and by registered letter within seven days of the invoice date and include the date and references of the invoice. If one of these conditions is not met, the dispute will be deemed not to have been made, and the invoice shall be deemed to have been definitively accepted, without any obligation on the part of HERWEY BVBA to reply to this dispute.

#### ARTICLE 9 - Transfer of risk and retention of title

The materials supplied, whether or not in the course of work, even in the case of (non-permitted) incorporation, remain the property of HERWEY BVBA until full payment, including any interest and costs, has been received.

As long as HERWEY BVBA retains the right of ownership according to this clause, the customer remains responsible for keeping the materials in good condition. He is not allowed to modify them, pledge them, sell them or encumber them in any way, nor incorporate or transform them. He is liable for them and undertakes to insure himself against all risks.

If the customer encumbers the materials before the right of ownership has passed to him, he accepts that the income resulting from the disposal of the materials shall accrue exclusively to HERWEY BVBA. This income shall be regarded as special and separately held by the customer and shall not be mixed up with his other general or special resources or assets.

In the event that the materials are returned to HERWEY BVBA on the basis of this retention of title, HERWEY BVBA shall not be liable for any compensation. HERWEY BVBA shall be entitled to offset any advance payments or partial payments received with regard to those materials against outstanding claims of any kind (this includes a claim for all damages suffered due to non-fulfilment of the contract).

The materials are transported or shipped at the expense and risk of the customer. The storage of materials pending delivery or collection shall be at the risk and expense of the customer.

#### ARTICLE 10 – Liability and indemnification

HERWEY BVBA shall not be liable to the customer or to third parties for the delivery of materials or services and for the execution of works, nor is it obliged to provide indemnification for mistakes, except for its own fraud, nor for the mistakes of its employees and subcontractors, even for their gross negligence and intent.

Any claim for compensation on the part of the customer shall be inadmissible in the absence of an immediate and detailed statement of all factual data regarding any damage. HERWEY BVBA shall not be liable for product liability as stipulated in the law of 25 February 1991, nor shall it be personally liable for the product liability of third parties. The customer shall indemnify HERWEY BVBA against any third-party claims for product liability as a consequence of a defect in a product that the customer had delivered to a third party and which consisted or included products supplied by HERWEY BVBA.

Complaints must be motivated, sent in writing and sent by registered mail within seven days after delivery and/or execution of the works and in any case before they are put into use. Complaints do not suspend the customer's payment obligation.

Lack of conformity, inter alia, with regard to sizes, colours and presentation of the materials shall be expressly and in all cases considered visible defects. This list is not exhaustive.

Minor deviations that are considered permissible in the sector or technically unavoidable, such as those relating to the quality, quantity, finish, and the like, shall not constitute grounds for complaint. The conformity of the delivery and the visible defects must be checked immediately on receipt by the customer. This inspection is deemed to have taken place at the moment of commencement of unloading and at the place of unloading, and this before the materials are unloaded. The customer that wishes to carry out both a qualitative and quantitative check must inform HERWEY BVBA of this in advance in writing.

The absence of the customer at the time of delivery/execution of the service implies his/her agreement to the delivery of the materials and waives any responsibility or liability of HERWEY BVBA regarding the delivery for visible defects. HERWEY BVBA is not responsible for and consequently has no obligation to indemnify hidden defects. In any case, this indemnification cannot extend further than that of the suppliers and shall be excluded when the deliveries and/or work performed are not paid for in full.

Complaints based on hidden defects must, on pain of nullity, be submitted immediately after their discovery and, at the latest, within 8 days of the date on which they were submitted. HERWEY BVBA must be informed of complaints on account of hidden defects immediately after their discovery and at the latest within 8 days of delivery. Failing this, the customer shall be deemed to have irrevocably waived any rights.

With respect to consumers in the sense of the law of 1 September 2004 concerning the protection of consumers with regard to the sale of consumer goods, HERWEY BVBA can only be held responsible and possibly indemnified by repair or replacement for defects in conformity that existed at the time of delivery and which manifest themselves within a period of two years and provided that, on pain of forfeiture, the customer clearly indicates the defect by registered letter and within two months of its discovery.

The scope of the indemnification is limited to the agreed price of delivered or installed materials. In any case, the compensation for possible liability of HERWEY BVBA shall be limited to the value of the materials delivered or to be delivered. HERWEY BVBA is under no circumstances be liable for damage such as consequential loss, indirect loss, etc., of any kind whatsoever.

#### ARTICLE 11 – Default

If the customer fails to fulfil his/her obligations (e.g. payment) in whole or in part, HERWEY BVBA shall be entitled, without any compensation being due, by operation of law, to suspend, terminate or consider the agreement to be null and void.

In the event of such a cancellation or dissolution of the agreement, the customer undertakes to pay HERWEY BVBA in full for the work already carried out, services already rendered, the costs already incurred, and the materials already purchased for the concerned, plus a fixed compensation of 35% of the price stipulated in the agreement.

If the agreement has been concluded with a customer - a consumer in the sense of the Act of 14 July 1991, he has the right, in the event of non-performance of the agreement within a period of two months following a written reminder, to terminate the agreement and claim a maximum compensation of 10% of the price stipulated in the agreement.

#### ARTICLE 12 – Dissolution due to insolvency

HERWEY BVBA reserves the right to regard the agreement as dissolved by law and without prior notice in the event of concurrence, or any insolvency procedure such as bankruptcy, as well as in the case of an appeal to the Continuity of Enterprises Act, liquidations, as well as apparent insolvency and in the event of a change in the customer's legal situation, without prejudice to the application of Article 10.

#### ARTICLE 13 – Impossibility of performance

When HERWEY BVBA is unable to execute the agreement due to force majeure, a strike, lock-out, etc., HERWEY BVBA reserves the right to unilaterally terminate the agreement without any compensation being claimed.

#### ARTICLE 14 – Transfer of receivables

The conclusion of the agreement shall be regarded as an agreement of transfer of claim. This means that in the event of late payment, HERWEY BVBA may notify the debtor of its claim by registered letter to its debtor for all the amounts owed by the customer. The customer is obliged to inform HERWEY BVBA at the first request with all details of his debt claim against his debtor as soon as HERWEY BVBA has given notice of its intention to apply this article.

#### ARTICLE 15- Guarantee

In so far as a guarantee is provided by the manufacturer of the materials supplied, it may only be invoked against the manufacturer, and this is in accordance with the conditions laid down by the manufacturer, which will be provided to the purchaser upon the first request.

The guarantee does not extend to the materials in which the materials supplied by HERWEY BVBA are incorporated. Any guarantee HERWEY BVBA may provide concerning the materials and services is limited to and never exceeds the guarantee that HERWEY BVBA itself received from its suppliers.

The customer bears the burden of proof.



HERWEY BVBA is free to carry out repairs under the guarantee, even when all the conditions of the guarantee have been met. In any case, all possible additional costs such as transport and working hours shall remain due.

If the defect is not sufficiently clearly described, the guarantee will become null and void. Furthermore, when compensating or repairing the materials, account shall also be taken of any aggravation of the defect resulting from the use by the customer after he has discovered the defect or should reasonably have discovered the defect. The aggravation shall be entirely at the expense of the customer.

#### ARTICLE 16 – Conventional debt comparison

In the event of the opening of insolvency proceedings (such as bankruptcy, appeal to the Continuity of Enterprises Act, liquidation) or in the event of an attachment or any other case of concurrence, set-off shall take place ipso jure, without any prior notice of default or notice of default or judicial decision.

This set-off shall also apply to and in respect of all amounts due and not due (e.g. also severance payments or other amounts due which become or will become due and/or payable after and/or because of the situation of concurrence, and with the forfeiture of all permitted payment facilities.

#### ARTICLE 17 – Industrial properties

All designs, studies, sketches, plans, specifications, photographs, engravings, printed matter, samples, tests and pilot products, etc. ... which were made available by HERWEY BVBA, even in the case of special remuneration, are and remain our property.

When they are handed over to the customer, they may not be abused by him or by third parties, e.g. by using them for other projects. The compensation shall be paid in the event of refusal to or in the event of abuse by third parties or the customer, and the compensation shall be fixed at a flat rate of 12% of the contract price, without prejudice to the right to prove higher damage. At the first request of HERWEY BVBA, all documents must be returned to HERWEY BVBA.

HERWEY BVBA also reserves the full intellectual property rights to the above-mentioned documents, as well as to all the industrial property rights, business rights and other rights which may result from it.

#### ARTICLE 18 - Applicable law - Competent court

This agreement is governed by Belgian law. In the event of a dispute, the courts of the judicial district of Tongeren are exclusively competent.