

## GENERAL TERMS AND CONDITIONS

1. Applicability 1.1. These Terms and Conditions are applicable to all agreements made with SMIT and to all offers and deliveries made by SMIT, unless expressly agreed otherwise in writing by the parties. 1.2. These Terms and Conditions shall be deemed to constitute an integral part of the agreement; specific terms and conditions, entered into in writing, shall prevail over these General Terms and Conditions. 1.3. The General and Specific Terms and Conditions, employed by the other party, may only constitute a part of the contract if and in so far as said Terms and Conditions have been expressly accepted by SMIT. 2. Quotations 2.1. All quotations are completely without obligation, unless agreed otherwise in writing. 2.2. The agreement shall be deemed to have come into effect if, within eight days of receipt of the order or of acceptance of the non-binding quotation, SMIT has provided confirmation thereof. 2.3. Agreements, undertakings and statements made by employees of SMIT shall only be binding upon SMIT after said agreements, undertakings and statements have been approved and confirmed by the management of SMIT in writing. 2.4. The Client shall undertake to keep strictly confidential all information received, including drawings, designs, calculations and technical data, supplied in respect of a possible agreement, and not, except with the written permission of SMIT, to supply said information to third parties or to divulge, in any way whatsoever, the content thereof. 3. Copyrights 3.1. Unless agreed in writing, under a separate agreement, SMIT shall remain the titleholder of all copyrights and industrial property rights, relating to the agreement to be implemented, or which have been granted by SMIT in respect thereof, or which constitute a part of the agreement. 3.2. The aforementioned drawings, designs, calculations and technical data, relevant to the implementation of the agreement, as well as all statutory regulations governing technical data, shall be deemed to constitute a part of the agreement, in that they serve to provide a more complete/more detailed description of the subject thereof. 3.3. Moreover, the Client shall be prohibited from reproducing said drawings, designs, calculations and technical data, in part or in full, or from supplying said information to third parties, or from using said information in any other manner than is strictly necessary for implementing the agreement. 3.4. The Client shall undertake to immediately return all data made available to him in respect of the order, without any reservation, in the event that the agreement terminates or is terminated in any way whatsoever, or that the quotation becomes invalid or is cancelled. 4. Changes in the content of the agreement a. changes to the order: a.1. SMIT shall expressly reserve the right to make minor changes to the agreed specifications if and in so far as, in SMIT's professional judgement, said changes are deemed necessary for the correct execution of the order. a.2. In the event that the Client wishes to make any changes, SMIT shall be entitled to refuse acceptance of the order, or to unilaterally change the price laid down in the agreement by the amount which SMIT judges to be commensurate with the new content of the agreement. a.3. The Client shall not, under any circumstances, be entitled to make or demand changes to the technical data, designs, drawings and calculations pertaining to the agreement. b. price changes: b.1. All prices shall be estimated prices, unless agreed otherwise in writing. All price changes resulting from changes to the order, as well as additional work and changes due to a default or delay on the part of the Client, or changes necessary in the execution of the work, price increases in materials, wage increases and other circumstances beyond SMIT's control, shall be at the risk and for the account of the Client. b.2. If and in so far as, contrary to the above, a fixed price is agreed in writing, the price agreed shall be deemed to exclude additional work and surcharges (e.g. weekend and night surcharges). b.3. Notwithstanding the aforementioned, all prices shall exclude VAT, packaging and transportation costs. 5. Payment a. services and products: 5.1. Unless agreed otherwise, payment of the agreed price shall, in each case, be made within fourteen days of the invoice date and, if applicable, according to the following method of payment. -25% on acceptance of the order; -50% after commencement of the work, to be paid in equal instalments, determined by the number of stages or (heat) treatments that the order entails and indicated by the invoices despatched by SMIT; -25% on completion of the order, being within eight days of the acceptance date described in article 7. b. only products: or only repair: Payment shall be made no later than 30 days after the invoice date. 5.2. Notwithstanding the aforementioned, SMIT shall be entitled at any time prior to commencing the execution of the order, to demand, in addition to the payment of the aforementioned 25%, that sufficient security for the fulfillment of 100% of the payment obligations be provided by the Client. 5.3. In the event that the aforementioned advance payment of 25% is not made and/or the required security is not provided within the period set by SMIT in its request in respect thereof, SMIT shall be entitled, without judicial intervention, to consider the agreement terminated. In such a case, and in the event that the Client does not pay the aforementioned 25% within eight days of the agreement having come into effect, the Client is liable to pay compensation to SMIT, which shall amount to a minimum of 25% of the sum payable which would have been payable by the Client if the order had been completed under normal circumstances. The above stipulation shall be without prejudice to SMIT's right to claim full compensation. 5.4. Payment is not considered to be made until SMIT has free disposal of the sum payable by the Client. The set off and/or reduction of a debt by the Client shall not be permitted, unless the authority has been legally vested in him to do so, and his counterclaim is in some way connected to the order. 5.5. The payments made by the Client shall always first cover the settlement of all interest and charges due and shall subsequently cover payment of the longest outstanding debts, even if the Client declares that the payment is related to a later invoice. 5.6. In the event of non-payment, untimely payment or incomplete payment as a result of the aforementioned, the Client is liable to pay interest at a rate of 2% per month on the sum payable from the due date until the date on which full payment is made, in addition to all extra judicial debt collection charges, with a minimum payment of Dfl. 500.00, which shall be without prejudice to SMIT's right to full compensation. 5.7. In the event

that an agreement has been concluded by SMIT with more than one Client, each Client shall be severally liable for the whole sum payable to SMIT.

**6. Delivery**

6.1. The agreed date of delivery/completion shall commence from the moment that the following terms and conditions have been fully met: -written confirmation of the order by SMIT; -receipt, processing and approval of all relevant technical data; -provision by the Client of the security, and settlement of the advance payments required; -receipt and approval of any goods to be delivered by the Client for the execution of the order.

6.2. The agreed date of delivery/completion shall be cumulatively extended by the following periods: -the period necessary to make changes, under these terms and conditions, to the order, in addition to all direct and indirect delays resulting therefrom; -the period in which the Client, in defiance of the agreed stipulations, does not discharge his obligations, such as non-payment, incomplete or incorrect payment; -the period in which, as a result of force majeure, SMIT is fully or partially unable to operate.

6.3. Unless otherwise agreed in writing, delivery shall always take place ex works, in accordance with the most recent edition of the Incoterms. On SMIT's instructions, the Client shall immediately arrange for transport.

6.4. The Client shall be bound to accept the delivery in installments. The Client's payment obligation shall, in that case, be limited to the part which has been delivered.

**7. Inspection**

7.1. SMIT shall assume no liability whatsoever for any damage which may occur to goods received on its premises for treatment, during the stay of said goods on its premises, unless expressly agreed otherwise. In the event that the Client wishes to inspect the items to be supplied, he may do so at his own risk and for his own account, before transportation takes place.

7.2. If it is agreed that the Client be present at the pre-purchasing inspection or the testing of the items to be supplied, the Client shall receive an invitation in good time. After a pre-purchasing inspection or the successful implementation of the test, which is also taken to mean that the items are found to be essentially sound, the Client shall sign the relevant acceptance form. Minor faults or defects, being defects and/or faults which do not essentially impair the items to be delivered, can never constitute a valid reason for the Client to refuse or defer acceptance.

7.3. If it is not agreed that the Client be present at the pre-purchasing inspection or testing, or if the Client does not respond to the invitation as mentioned above, for whatever reason, then the signing of the acceptance form by SMIT shall be valid as the Client's acceptance.

**8. Jobbing**

8.1. If it is only agreed that SMIT shall guide and inspect or supervise work carried out by the Client, then this shall be referred to as jobbing. In this case the Client, with the express exclusion of SMIT, shall be fully responsible for carrying out the relevant work, particularly for the actual implementation of the instructions given by SMIT. The responsibility and liability of SMIT can never extend beyond the instructions given, and to be given, themselves.

8.2. All deferment and delay in jobbing shall be for the account and at the risk of the Client, unless caused willfully or by gross negligence on the part of SMIT.

8.3. Any agreed installation and operative testing of the items supplied, carried out for the Client, shall also be covered by the abovementioned regarding jobbing. The Client shall, on the occasion of the operative testing of the items supplied, also be obliged to: -inform SMIT in good time, being a minimum of 3 weeks in advance, that the relevant items are ready for the operative test; -ensure that there is a suitable, in the sense of clean and accessible, environment for the operative test; -make and maintain available, for the duration of the entire test period, sufficiently qualified personnel; -make and maintain available, for the duration of the entire test period, all equipment and materials deemed by SMIT to be necessary.

8.4. The stipulations regarding acceptance, mentioned in article 7, above, apply equally to jobbing, which extends to the operative testing of goods delivered.

**9. Guarantees regarding products supplied**

9.1. If and in so far as expressly agreed, SMIT undertakes, subject to the following, to guarantee the correct functioning and the special characteristics of the items supplied for a period of 12 months after the acceptance referred to in article 7, above, on the understanding that the guarantee concerning said special characteristics shall have been fulfilled and shall end if, and in so far as said characteristics are shown to be present in an operative test and, moreover, provided that: -the relevant data furnished by the Client do not hinder the fulfillment of that which has been agreed; -correct functioning is only related to the soundness of the technical information pertaining to the agreement; -all loss and damage arising from unsound maintenance, not carried out by SMIT, unsound use of the items and outside influences, this being taken to mean influences not inherent in the nature of the items supplied, shall not be deemed to be understood under the correct functioning and the special (agreed) characteristics of the items; -the installation and/or operative tests on the items supplied, as mentioned in article 8.3, were carried out under the supervision of SMIT.

9.2. In the event that guarantee claims arise, it shall be decided in mutual consultation whether SMIT shall supply new replacement components, or supervise the repair work itself. SMIT shall, however, never be bound to do more than supply new components and supervise repair work. All other work and costs shall be for the account of the Client.

9.3. All components replaced under the terms of the guarantee shall become the property of SMIT and shall be returned immediately at the first request.

9.4. Supplementary to the stipulation in article 9.1, above, every guarantee shall lapse if third parties, without the consent of SMIT, are brought in to repair or correct defects covered by the guarantee.

**Guarantees regarding heat treatments and repairs**

9.5. If and in so far as agreed expressly and in writing, SMIT guarantees the correct implementation of the heat treatments and repairs, which have been agreed with you, or which are arranged or altered on site and communicated in written form to our personnel, but shall be indemnified from any hidden defects in the material to be treated and shall never be liable for distortions and/or cracks etc. which may occur.

**10. Liability**

10.1. SMIT shall only be liable if and in so far as the liability of SMIT has been legally proven.

10.2. The liability of SMIT shall, in any event, be limited to the maximum amount that is insured or that shall be paid by the insurance company on the basis of its (product) liability insurance, in the absence of which, as well as in the absence of cover, for whatever

reason, the liability of SMIT shall be limited to a maximum of the order price agreed. 10.3.If and in so far as the loss or damage is covered by any insurance of the Client, including C.A.R. insurance, regarding the work, said loss or damage may not be claimed from SMIT or SMIT's insurer. 10.4.SMIT shall never be liable for consequential loss or damage, under whatever name. The liability of SMIT shall expire, in any event, 12 months after the acceptance of the items supplied, as referred to in article 7, above, or after the product has been delivered or after repair has been completed. 10.5.The Client is obliged to take out all usual insurance which may cover the liability of SMIT, particularly all insurance covering possible damage caused by SMIT or its employees during work carried out on the Client's premises. 11. Indemnity 11.1.The Client shall indemnify SMIT at all times against loss and damage which he sustains or will sustain as a result of a violation by SMIT of the industrial property rights of third parties (or the Client), in so far as resulting from information provided by the Client under the terms of the order. 12.Force majeure 12.1.If the execution of the order, as a result of unforeseen circumstances or force majeure, is rendered wholly or partially impossible, SMIT reserves the express right to consider the agreement terminated, or to unilaterally amend or defer it, such as exclusively judged by SMIT, on the understanding that the interests of the Client shall not be violated. Force majeure, as referred to above, shall be taken to mean all involuntary disturbances or impediments, due to which the implementation of the agreement becomes more expensive or more difficult, such as storm damage and other natural disasters, impediments by third parties, all-out or partial strikes, lock-outs, civil disturbance in the Netherlands, in the country where the agreement is being executed or in the country of origin of the materials, war or war damage in the Netherlands and in other countries, loss or damage of material during transportation, illness or death of irreplaceable employees, embargoes and such impediments, fire and other accidents in any firm involved, as well as all other circumstances which are beyond the control of SMIT.12.2.In the case of an ongoing force majeure situation, this being a force majeure situation lasting more than 6 months, both parties shall have the equal right to consider the agreement terminated, this being subject to each other's interests and on the express condition that each party shall bear its own costs, this with the express exclusion of compensation and against full discharge. 13.Applicable law 13.1.All agreements entered into by SMIT are subject to Dutch law. All disputes are referred to the judgment of the Municipal Court that has jurisdiction in the place where SMIT is established, unless the District Court has jurisdiction for such disputes.

**These Terms and Conditions were filed with the Clerk of the District Court of Arnhem, on 16 March 1992, under deed number 28/1992 and deed registration number 530/1992.**