

# **GENERAL TERMS AND CONDITIONS**

## **VAN VUUREN MACHINES B.V.**

Deposited at the registry of the District Court of Midden-Nederland on the 28<sup>th</sup> January 2022, under reference number 22-14

### **Article 1: Applicability**

- 1.1 These terms and conditions apply to all offers made by Van Vuuren Machines B.V., to all agreements concluded by the company and to all agreements resulting from these agreements, insofar as Van Vuuren Machines B.V. is a supplier or Service Provider.
- 1.2 Van Vuuren Machines B.V. is referred to as the Service Provider. The other party shall be referred to as the Customer.
- 1.3 In the event of a conflict between the content of the agreement concluded between the Customer and the Service Provider and these terms and conditions, the provisions of the agreement shall prevail.

### **Article 2: Offers**

- 2.1. All offers are without obligation. The Service Provider has the right to withdraw its offer up to two working days after it received the acceptance.
- 2.2. If the Customer provides any information to the Service Provider, the Service Provider may assume that the information is accurate and complete and will base its offer on that information.
- 2.3. Quoted prices are in euros, exclusive of VAT and other government levies or taxes. The prices are also exclusive of travel, accommodation, packaging, storage and transport costs, as well as costs of loading, unloading and assisting with customs formalities.

### **Article 3: Non-disclosure**

- 3.1. All information (such as offers, designs, images, drawings and know-how) of any nature and in any form whatsoever provided to the Customer by or on behalf of the Service Provider is confidential and will not be used by the Customer for any purpose other than to fulfill the Agreement.
- 3.2. The information referred to in paragraph 1 of these Terms and Conditions shall not be disclosed or reproduced by the Customer.
- 3.3. If the Customer breaches any of the obligations set out in paragraphs 1 and 2 of these Terms and Conditions, the Customer shall be liable to pay an immediately payable penalty of €25,000 for each breach. This penalty may be claimed in addition to damages pursuant to the law.
- 3.4. The Customer must return or destroy the information referred to in paragraph 1 of these Terms and Conditions within the by Service Provider demanded timeframe in the event that this provision is violated. The Customer will be liable to pay the Service Provider an immediately payable penalty of €1,000 per day. This penalty may be claimed in addition to any damages pursuant to the law.

#### **Article 4: Advise and information provided**

4.1. The Customer cannot derive any rights from advice and information provided by the Service Provider that does not relate directly to the Order. Nor can the Customer derive any rights from advice and information given by agents or dealers who offer the Service Provider's products, unless they have been explicitly confirmed by the Service Provider.

4.2. If the Client provides information to the Service Provider, the Service Provider may assume the accuracy and completeness of this information during the implementation of the Agreement.

4.3. The Customer indemnifies the Service Provider against any claim by third parties relating to the use of advice, drawings, calculations, designs, materials, brands, samples, models, etc. provided by or on behalf of the Customer. The Customer shall compensate the Service Provider for all damage that he may suffer, including the costs incurred to defend himself against such claims.

#### **Article 5: Delivery time / implementation period**

5.1. A declared delivery time or implementation period is indicative.

5.2. The delivery period or implementation period will begin only when agreement has been reached on all commercial and technical details, all information, including final and approved drawings, etc., is in the Service Provider's possession, the agreed payment or instalment has been received and any other conditions necessary for the implementation of the assignment have been met.

5.3. In the event of any of the following

a. Circumstances other than those known to the Service Provider when the delivery deadline or work period was announced, the delivery deadline or implementation period will be extended by the time that the Service Provider needs, having due regard to his planning schedule, to complete the work under those circumstances;

b. Additional work, the delivery period or implementation period will be extended by the time that the Service Provider, in accordance with his planning, needs to deliver (or arrange for the delivery of) the materials and parts for that purpose and to carry out the additional work;

c. Suspension of obligations by the Service Provider, the delivery period or implementation period will be extended by the time that the Service Provider, in accordance with his planning, needs to complete the order after the reason for suspension has ended.

Subject to evidence to the contrary from the Customer, the duration of the extension of the delivery period or implementation period will be presumed to be necessary and to be the result of a situation as referred to above under a to c.

5.4. The Customer is obliged to pay all costs incurred by the Service Provider or damages sustained by the Service Provider as a result of a delay in the delivery period or implementation period, as referred to in paragraph 3 of these Terms and Conditions.

5.5. Exceeding the delivery period or implementation period does not under any circumstances entitle the Customer to compensation or dissolution. The Customer

indemnifies the Service Provider against any claims from third parties as a result of the delivery period or implementation period being exceeded.

#### **Article 6: Delivery and transfer of risk**

6.1. Delivery will take place at the moment that the Service Provider makes the item available to the Customer at its business location and has notified the Customer that the item is at its disposal. As from that moment, the Customer shall bear the risk of the item for the purposes of storage, loading, transport and unloading, among other things. Risks relating to the transport of goods are explicitly for the Customer's account.

6.2. The Customer and the Service Provider may agree that the Service Provider shall arrange for transport. In that case, too, the risks of storage, loading, transport and unloading, among others, shall be borne by the Customer. The Customer may take out insurance to cover such risks.

6.3. If goods are to be exchanged and the Customer retains the goods to be exchanged while awaiting delivery of the new goods, the risk in relation to the goods to be exchanged shall remain with the Customer until the Customer has placed them in the Service Providers possession. If the Customer is unable to deliver the goods to be exchanged in the state in which they were when the agreement was concluded, the Service Provider may dissolve the agreement.

#### **Article 7: Price changes**

The Service Provider may pass on to the Customer any increase in cost-determining factors that have occurred after the Agreement was concluded. The Customer is obliged to pay the price increase at the Service Provider's first request.

#### **Article 8: Force Majeure**

8.1. A failure in the performance of his obligations cannot be attributed to the Service Provider if this failure is the result of force majeure.

8.2. Force majeure shall include the circumstance that third parties engaged by the Service Provider, such as suppliers, sub Service Providers and carriers, or other parties on which the Service Provider depends, fail to fulfill their obligations or fail to do so in good time, weather conditions, natural disasters, pandemics, terrorism, cybercrime, disruption of the digital infrastructure, fire, power failure, loss, theft or destruction of tools, materials or information, roadblocks, strikes or work interruptions and import or trade restrictions.

8.3. The Service Provider shall be entitled to suspend the fulfillment of his obligations if he is temporarily prevented from fulfilling them by force majeure. Once the situation of force majeure has ceased to exist, the Service Provider will fulfill his obligations as soon as his planning schedule permits this.

8.4. If there is a situation of force majeure and performance is or becomes permanently impossible, or if the temporary situation of force majeure has lasted for more than six months, the Service Provider is entitled to dissolve all or part of the agreement with immediate effect. The Customer is entitled to dissolve the agreement with immediate effect in such cases, but only in respect of that part of the obligations that have not yet been fulfilled by the Service Provider.

8.5. The parties shall not be entitled to compensation for any damage suffered or to be suffered as a result of the force majeure, suspension or dissolution within the meaning of these terms and conditions.

#### **Article 9: Additional work**

9.1. Changes to the Work shall in any event result in additional work if:

- a. there is a change in the design and/or the specifications;
- b. the information provided by the Customer does not match the actual situation; and
- c. estimated quantities differ by more than 5%

9.2. Additional work will be calculated on the basis of the price-determining factors applicable at the time when the additional work is carried out. The Customer is obliged to pay the price of the contract extras at the Service Provider's first request.

#### **Article 10: Execution of work on site**

The Customer shall ensure that the Service Provider can carry out his work without interruption and at the agreed time and that, in the performance of his work, he has access to the necessary facilities, such as:

- a. gas, water, electricity and internet;
- b. heating
- c. lockable dry storage space;
- d. facilities prescribed under the Working Conditions Act and other relevant regulations.

10.2 The Customer bears the risk and is liable for - damage to and theft or loss of property of the Service Provider, the Customer and third parties - such as tools, materials intended for the work or equipment used for the work, which are located at or near the location where the work is executed or at another agreed location.

10.3 Without prejudice to the provisions of paragraph 2 of these Terms and Conditions, the Customer is obliged to take out adequate insurance against the risks referred to in that paragraph. The Customer shall also take out insurance to cover the work risk for the equipment to be used. The Customer must send the Service Provider a copy of the relevant insurance policy or policies and proof of payment of the premium at the first request. In the event of any damage, the Customer is obliged to report this immediately to his insurer for further processing and settlement.

#### **Article 11: Delivery of the work**

11.1. The work will be considered completed in the following cases:

- a. if the Customer has approved the work;
- b. if the Customer has put the work into commission. If the Customer puts part of the work into use, that part will be deemed to have been completed;

c. if the Service Provider gives written notice to the Customer that the work has been completed and the Customer does not indicate in writing within 14 days of the notice that he does not approve the work;

d. if the Customer does not approve the work on account of minor defects or missing parts that can be repaired or provided within 30 days.

11.2. If the Customer does not approve the work, the Customer is obliged to notify the Service Provider of this in writing, stating the reasons. The Customer must give the Service Provider the opportunity to still complete the work.

11.3. The Customer indemnifies the Service Provider against all claims from third parties for damage to parts of the work that have not yet been completed that are caused by the use of parts of the work that have already been completed.

## **Article 12: Liability**

12.1. In the event of an attributable failure, the Service Provider is obliged to still fulfill its contractual obligations, subject to Article 14.

12.2. The Service Provider's obligation to compensate for damages on any grounds whatsoever is limited to those damages for which the Service Provider is insured under an insurance policy taken out by or on behalf of the Service Provider. However, the extent of this obligation will never exceed the amount paid out under this insurance in the case in question.

12.3. If, for whatever reason, the Service Provider is unable to invoke paragraph 2 of these Terms and Conditions, the obligation to pay damages will be limited to a maximum of 10% of the total order price (exclusive of VAT). If the agreement consists of parts or partial deliveries, this obligation will be limited to a maximum of 10% (exclusive of VAT) of the order price for that part or partial delivery. In the case of continuing performance contracts, the obligation to compensate for damage shall be limited to a maximum of 10% (exclusive of VAT) of the contract price owed in the twelve months preceding the event causing the damage.

12.4. Not eligible for compensation are:

a. consequential loss. Consequential damage is understood to be, among other things, damage caused by stagnation, loss of production, loss of profit, fines, transport costs and travel and accommodation expenses;

b. supervision damage. The term 'supervision damage' means, among other things, damage caused by or during the performance of the work to objects on which work is being carried out or to objects situated in the vicinity of the worksite;

c. damage caused by intent or gross negligence on the part of helpers or non-management employees of the Service Provider.

Customer can insure themselves against these damages if possible

12.5. The Service Provider is not obliged to pay any compensation for damage to materials, machines and objects supplied by or on behalf of the Customer (including tractors supplied). Risks relating to these materials and objects will be borne by the Customer, even if they are located on terrain and/or buildings used by the Service Provider.

This explicitly also applies to risks relating to fire, theft, loss, weather conditions, natural disasters, pandemics, terrorism, destruction and/or vandalism.

12.6. The Customer indemnifies the Service Provider against all third-party claims for product liability stemming from defects in products provided by the Customer to third parties that include the products or materials provided by the Service Provider. The Customer must compensate the Service Provider for all damage that he incurs in this context, including the costs of all or part of the legal proceedings.

### **Article 13: Warranty and other claims**

13.1. Unless otherwise agreed in writing, the Service Provider warrants the proper performance of the agreed performance for a period of six months after delivery or implementation, as detailed in the following paragraphs.

13.2. If the parties have agreed on different warranty terms, the provisions of this article shall apply in full, unless this is in conflict with those different warranty terms.

13.3. If the agreed performance has not been carried out in a satisfactory manner, the Service Provider will choose, within a reasonable period, whether to carry out the performance in a satisfactory manner or to credit the Customer for a proportionate part of the contract sum.

13.4. If the Service Provider chooses to carry out the performance in a proper manner at a later date, he shall determine the manner and time of performance. The Customer must in all cases give the Service Provider the opportunity to do so. If the agreed performance consisted in part or in whole of the processing of material supplied by the Customer, the Customer must supply new material at his own expense and risk.

13.5. Parts or materials to be repaired or replaced by the Service Provider must be sent to him by the Customer.

13.6. The following shall be borne by the Customer:

- a. all transport or shipping costs;
- b. costs of disassembly and assembly; and
- c. travel and accommodation expenses and travelling time.

13.7 The Service Provider shall not be obliged to fulfill the warranty until the Customer has fulfilled all its obligations.

13.8 Warranty is excluded for defects resulting from:

- normal wear and tear;
- injudicious use;
- maintenance that has not been carried out or carried out incorrectly;
- installation, assembly, alteration or repair by the Customer or by third parties
- defects in or unsuitability of goods originating from or prescribed by the Customer;

- defects in or unsuitability of materials or resources used by the Customer.

13.9 No warranty is given on:

- delivered items that were not new at the time of delivery;
- the testing and repair of the Customer's equipment;
- parts for which a factory guarantee has been given.

13.10 The provisions of these Terms and Conditions shall apply similarly in the event of any claims by the Customer on the grounds of breach of contract, non-conformity or any other basis whatsoever.

#### **Article 14: Duty to complain**

14.1. The Customer may not invoke defects in the product or service unless a written complaint has been submitted to the Service Provider within fourteen days after the defect was detected or should, within reason, have been detected.

14.2. The Customer must submit complaints about the invoice to the Service Provider in writing within the payment period, on penalty of forfeiture of all rights. If the payment period is longer than thirty days, the Customer must have complained in writing within thirty days of the invoice date at the latest.

#### **Article 15: Uncollected items**

15.1. The Customer is obliged to take delivery of the item(s) which is/are the subject of the agreement at the agreed location at the end of the delivery period or implementation period.

15.2. The Customer must cooperate fully, free of charge, to enable the Service Provider to effect delivery.

15.3. Uncollected items will be stored at the Customer's expense and risk.

#### **Article 16: Other provisions relating to uncollected items**

In the event that the provisions of paragraph 1 or 2 of the previous article are violated, the Customer shall, after having received notice of default from the Service Provider, owe the Service Provider a penalty for each violation in the amount of €250 per day with a maximum of €25,000. This penalty may be claimed in addition to damages pursuant to the law.

#### **Article 17: Payments**

17.1. Payment shall be made at the place of business of the Service Provider or into an account to be designated by the Service Provider.

17.2. Payment must be fully fulfilled prior to delivery.

17.3. In the case of orders with a value of more than €5,000, a down payment of 30% of the total order value must be made at a time to be specified by the Service Provider, prior to delivery. This down payment shall be offset against the final invoice and payment referred to in Article 17.2.

17.4. If the Customer fails to fulfill his payment obligation, he shall be obliged, instead of paying the agreed amount of money, to comply with a request from the Service Provider for payment in instalments.

17.5. The Customer's right to set off claims against the Service Provider or to suspend the fulfillment of its obligations is excluded, unless the Service Provider has been granted a suspension of payments or has been declared bankrupt or is subject to statutory debt rescheduling.

17.6. Regardless of whether the Service Provider has fully executed the agreed performance, everything that the Customer owes or will owe to the Service Provider under the contract will be immediately due and payable if

- a. a payment period has been exceeded;
- b. the Customer fails to fulfill his obligations under Article 16;
- c. bankruptcy or suspension of payment has been filed for Customer
- d. the Customer's assets or claims are seized;
- e. the Customer (company) is dissolved or liquidated;
- f. the Customer (natural person) requests to be admitted to the statutory debt rescheduling arrangement, is placed under administration or dies.

17.7. In the event of delay in the payment by the Customer of all or part of the sum of money, the Customer shall owe the Service Provider interest on that sum of money as from the day following the date agreed as the latest date for payment up to and including the date on which the Customer has paid the sum of money. If the parties have not agreed on a final date for payment, the interest shall be due as from 30 days after the date on which the amount fell due. The interest rate is 12% per year, but shall be equal to the statutory interest rate if this is higher. In calculating interest, part of a month is considered a full month. At the end of each year, the amount on which the interest is calculated is increased by the interest due for that year.

17.8. The Service Provider shall be entitled to set off its debts to the Customer against any debts owed to the Customer by companies affiliated with the Service Provider. The Service Provider shall also be entitled to set off its debts to the Customer against debts which companies affiliated with the Service Provider have to the Customer. Furthermore, the Service Provider is entitled to set off its debts to the Customer against claims on companies affiliated with the Service Provider. Affiliated companies are defined as: all companies belonging to the same group, in the sense of article 2:24b of the Dutch Civil Code and a participation in the sense of article 2:24c of the Dutch Civil Code.

17.9. In the event that the Customer's debts fall due, the Service Provider shall also be entitled to sell on the Customer's behalf materials and objects (including tractors) and to recover the revenue from them if the Customer fails to pay its debts that fall due despite repeated reminders. The Customer shall be obliged to provide all the cooperation required to enable such a sale to take place.

17.10. If payment is not made on time, the Customer is liable to pay the Service Provider all extrajudicial costs, to a minimum of €75.



These costs are calculated on the basis of the following table (principal amount incl. interest)

for the first € 3.000,-	15%.
for the excess up to € 6.000,-	10%
for the excess up to € 15.000,-	8%
for the remainder up to € 60.000,-	5%.
for the remainder from € 60.000,-	3%.

The actual extrajudicial costs incurred are due, if they are higher than those resulting from the above calculation.

17.11. If the contractor is wholly or largely justified in a judicial proceeding, all costs that he has incurred in connection with that proceeding will be borne by the customer.

### **Article 18: Assurances**

18.1. Regardless of the agreed payment conditions, the Customer is obliged, at the Service Provider's first request, to provide sufficient security for payment, at the Service Provider's discretion. If the Customer fails to do so within the specified period, he shall be in default forthwith. In that event, the Service Provider shall be entitled to dissolve the Agreement and to recover its losses from the Customer.

18.2. The Service Provider shall retain ownership of any goods delivered for as long as the Customer

- a. has not fulfilled his obligations under any agreement with the Service Provider;
- b. has not paid any claims arising from non-fulfillment of those agreements, such as compensation for damages, penalties, interest and costs.

18.3. As long as any goods delivered are subject to retention of title, the Customer may not encumber or dispose of them other than in the normal course of its business. This clause shall have effect under property law.

18.4. After the Service Provider has invoked his reservation of title, he may repossess the delivered goods. The Customer shall render every assistance in this regard.

18.5. If the Customer has fulfilled its obligations after the items have been delivered to the Customer by the Service Provider in accordance with the Agreement, the retention of title in respect of those items will revive if the Customer fails to fulfill its obligations under a later concluded Agreement.

18.6. The Service Provider shall have a lien and a right of retention on all items which it has or will have in its possession from the Customer for whatever reason (including materials, machines and objects supplied by or on behalf of the Customer; including tractors supplied) and for all claims which it has or may have against the Customer.

### **Article 19: Intellectual property rights**

19.1. The Service Provider is considered to be respectively the creator, designer or inventor of the works, models or inventions created under the Agreement. The Service Provider therefore has the exclusive right to apply for a patent, trademark or design.

19.2. The Service Provider shall not transfer any intellectual property rights to the Customer during the course of the performance of the Agreement.

19.3. If the performance to be provided by the Service Provider consists, or includes, the supply of computer software, the source code will not be transferred to the Customer. The Customer shall acquire a non-exclusive, worldwide and perpetual user license to the computer software solely for the purpose of normal use and proper functioning of the object. The Customer shall not be permitted to transfer the license or to issue a sublicense. If Customer sells the item to a third party, the license shall pass to the acquirer of the item by operation of law.

19.4. The Service Provider is not liable for any damage suffered by the Customer as a result of an infringement of intellectual property rights of third parties. The Customer shall indemnify the Service Provider against any claim by third parties relating to an infringement of intellectual property rights.

#### **Article 20: Transfer of rights or obligations**

The Customer cannot transfer or pledge rights or obligations under any article of these general terms and conditions or the underlying agreement(s), except with the prior written consent of the Service Provider. This clause shall have the legal effect of property.

#### **Article 21: Termination or cancellation of the agreement**

21.1. The Customer is not authorized to terminate or cancel the Agreement unless the Service Provider so agrees. If the Service Provider agrees, the Customer shall owe the Service Provider an immediately payable fee equal to the agreed price, less any savings resulting for the Service Provider from the termination. The compensation shall amount to at least 20% of the agreed price.

21.2 If the price is made dependent on the costs actually incurred by the Service Provider (cost-plus basis), the fee referred to in the first paragraph of this article will be estimated at the sum of the costs, working hours and profit that the Service Provider would be expected to have made during the entire implementation of the order.

#### **Article 22: Other stipulations**

The Service Provider shall be entitled to move material, machines and objects (including tractors) supplied by or on behalf of the Customer, to place them at other locations (not under the Service Provider's control) or to accommodate them, and to have work and modifications carried out to them. Article 12 paragraph 5 shall apply in full to all these actions.

#### **Article 23: Applicable law and jurisdiction**

23.1 Dutch law is applicable.

23.2. The Vienna Sales Convention (C.I.S.G.) shall not apply, nor shall any other international regulation of which exclusion is permitted.

23.3. The Dutch civil court that has jurisdiction in the place of establishment of the Service Provider takes cognizance of disputes. The Service Provider may deviate from this rule of jurisdiction and apply the statutory rules of jurisdiction.