

## General

1. These General Conditions shall apply whenever innoVfoam BV and the Customer agree upon a sales / purchase order, further referred to as "contract". Modifications must be agreed in writing. General Conditions of the purchaser, further referred to as "customer", hereby are explicitly rejected.

## Definitions

2. In these general conditions, the following terms shall be defined as follows:

- "Contract" is the written agreement between innoVfoam BV and the customer concerning the delivery of the works, including agreed amendments and additions to the said documents in writing.

- "Works" is all Machinery, Materials, Articles, (when applicable) including the Erection, Installation and Commissioning to be supplied by innoVfoam BV to the customer as defined in the contract.

- "Price" is the payment to be made for the works. When the works is not finalized in time for the purposes of clauses 17, 40, 41 and 47), the price shall be added with 10 percent or any other percentage that may have been agreed by the partners.

- "Site" is the place where the works are to be delivered or installed, including necessary surrounding area as is necessary for unloading, storage and internal transport of the works and installation tooling and equipment.

- "In writing" means either by document signed by innoVfoam BV and the customer, or by letter, fax and e-mail identifying the sender.

- "Gross Negligence" is an act or omission implying a failure to pay due to serious consequences, which a conscientious party would normally foresee as likely to ensue, or a deliberate disregard of the consequences of such act or omission.

## Drawings and Descriptions

4. All drawings and technical documents whether in electronic or any other form relating to the works submitted by innoVfoam BV or the customer prior or subsequent to the signing of the contract, shall remain property of the submitting party. Drawings, technical documents or other technical information received by one party shall not without the consent of the other party be used for any other purpose than erection and maintenance of the works. They may not without the consent of the submitting party otherwise be used or copy, reproduced, transmitted or communicated to a third party.

5. At the start of the period referred to on clause 52 innoVfoam BV shall, if so requested by the customer, free of charge provide information and drawings which are necessary to permit the customer to commission, operate and maintain the works. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. innoVfoam BV shall not be obliged to provide manufacturing drawings.

## Pre-acceptance before shipment

6. If a pre-acceptance before shipment is provided for in the contract, they shall, unless otherwise agreed, be carried out at the place of manufacture, during normal working hours. The pre-acceptance shall be carried out in accordance with general practice in the branch of industry within the country of industry.

7. innoVfoam BV shall inform the customer of the pre-acceptance in sufficient time to permit the customer to be represented at the pre-acceptance. If the customer is not represented, the pre-acceptance report shall be accepted as accurate.

8. If the pre-acceptance shows the works not to be in accordance with the contract, innoVfoam BV shall remedy the deficiencies in order to ensure that the works complies with the contract.

9. innoVfoam BV shall bear the costs for the pre-acceptance carried out at the place of manufacture. The customer will bear all travelling and living expenses for his representatives in connection with the pre-acceptance.

## Preparatory work and working conditions

10. The contractor shall in good time provide drawings showing the manner in which the works is to be erected, together with all information required for preparing suitable foundations for providing access to the works any necessary equipment to the point where the works is to be erected and for making all necessary connections with such tests.

11. The customer shall provide in time all installations and make available the necessary conditions for the installation of the works and for the correct operation of the works. This shall not apply to preparatory works which according to the contract shall be performed by innoVfoam BV.

12. The preparatory work shall be carried out in time by the customer in accordance with the drawings provided by the contract under clause 10. If the customer is responsible for transporting the works to the site, he shall ensure that the works is on the site in time.

14. The customer shall ensure that the following conditions are satisfied:

a) innoVfoam BV personnel shall be able to start the works in accordance with the agreed time schedule and to work during normal working hours. Provided the customer has been given notice in reasonable time work may be performed outside normal working hours to the extent deemed necessary by innoVfoam BV.

b) Before installation is started, the customer shall inform innoVfoam BV of all relevant safety regulations in force at the site. The installation shall not be carried out in unhealthy or dangerous situations. All the necessary safety and precautionary measures shall have been taken before installation is started and shall be maintained.

d) The customer shall free of charge make available to innoVfoam BV at proper time on the site auxiliary tools, machinery, materials, and supplies including gas, water, electricity, compressed air, heating, lighting etcetera, as well as measuring and testing equipment and products. innoVfoam BV shall specify in writing his requirements such as cranes, lifting equipment and equipment for transport in reasonable time.

e) The customer shall make available necessary storage facilities, office facilities providing protection against theft and deterioration of the works, tools and equipment and personnel effects of innoVfoam BV.

## Purchaser's default

15. If the customer anticipates that he will be unable to comply with the conditions of clauses 11, 12 and 14 or to receive the works on the site and / or allow the works to be completed in time, he shall forthwith notify innoVfoam BV in writing, stating the reason and if possible, the time when he will be able to comply with his obligations. The provisions of clause 16 shall apply.

16. If the customer fails to comply with clauses 11, 12 and 14 shall compensate innoVfoam BV for any resulting costs. The customer shall pay any part of the contract price which but for such failure would have become due. In such cases innoVfoam BV may, where practicable, choose to ensure compliance himself at the customers' expense, provided he does so in a reasonable manner. innoVfoam BV shall, after notification in writing to the customer, be entitled to suspend completion of the works for the duration of the customers' default. If the works is not yet on the site, innoVfoam BV shall arrange storage of the works at the risk and expense of the customer. innoVfoam BV shall also, if the customer so requires, insure the works at the customer's expense.

17. Unless completion of the works is prevented by any such circumstance as mentioned in clause 67, innoVfoam BV may by notice in writing require the customer to remedy his default within a final reasonable period. If, for any reason, for which innoVfoam BV is not responsible, the customer fails to remedy his default within such period, innoVfoam BV may by notice in writing terminate the contract. The customer shall then be entitled to compensation for the loss he suffers because of the customers' default. The compensation shall not exceed the contract price.

## Local Laws and regulations

18. innoVfoam BV shall ensure that the works are carried out in accordance with any law, regulation or rule which are applicable to the works. If required by innoVfoam BV, the customer shall provide relevant information to these laws, regulations and rules.

19. Variation in the works as caused by changes in laws, regulations and rules referred to in clause 18 or in their generally accepted interpretation, occurring between the date of submission of the offer (quotation) by innoVfoam BV and the final acceptance, will be implemented at customer's cost.

20. If innoVfoam BV and the customer are unable to agree upon the extra costs as referred to in clause 18, innoVfoam BV shall be compensated on a time basis for any variation work, until the dispute has been settled in accordance with clause 72.

## Variations

21. Subject to the provisions of clause 25, the customer is entitled to require variations to the scope, design and construction of the works until the works have passed final acceptance.

22. Request for variations shall be submitted in writing and shall contain an exact description of the variation required.

23. As soon as possible after receipt of a request for variation or after having himself made a proposal for a variation, innoVfoam BV shall notify the customer in writing, whether and how the variation can be carried out, stating the resulting alteration to the contract price, time for completion and other terms of the contract. innoVfoam BV shall also give such notice to the customer when variations are required as a result of changes in law as described under clause 18.

24. If completion of the works is delayed as a result of disagreements between innoVfoam BV and the customer on the consequences of variations, the customer shall pay any part of the contract price which would have become due if the works had not been delayed.

25. Save as provided in clause 19, innoVfoam BV shall not be obliged to carry out variations required by the customer, until either innoVfoam BV or the customer have agreed on how the variations will affect the contract price, the time for completion and other terms of the contract.

## Passing of Risk

26. The risk of loss or damage to the works shall pass to the customer in accordance with any agreed trade term, which shall be interpreted in accordance with the Incoterms in force at the date of formation of the contract. If no trade term has agreed upon, the Incoterm "exworks" shall be deemed to apply.

Any risk of loss or damage to the works not covered by the first paragraph of this clause, shall pass to the customer at final acceptance of the works.

Any loss or damage to the works after the risk has passed to the customer shall be at risk of the customer, unless such loss or damage results from innoVfoam BV's negligence.

## Final Acceptance

27. When erection has been completed, final acceptance tests shall, unless otherwise agreed, be carried out to determine whether the works are as required for acceptance to the contract. innoVfoam BV shall notify the customer that the works are ready for final acceptance. innoVfoam BV will give the customers sufficient time to prepare for and be represented at the final acceptance tests. The customer shall bear the costs of the final acceptance procedure. innoVfoam BV shall bear costs relating to his personnel and other representatives, unless so otherwise agreed upon in the contract.

28. The customer shall provide free of charge any power, materials and test-products and -carriers required for the final acceptance. He shall also install free of charge any equipment and provide any labour or other assistance necessary for carrying out the final acceptance.

29. If, after having been notified in accordance with clause 27, the customer fails to fulfil his obligations under clause 28 or otherwise prevent the final acceptance from being carried out, the tests shall be regarded as having been satisfactorily completed at the date for taking over tests stated in the innoVfoam BV's notice.

30. The final acceptance shall be carried out during normal working hours. If the contract does not specify the technical requirements, the final acceptance shall be carried out in accordance with general practice in the Industry.

31. innoVfoam BV shall prepare a final acceptance document. This document will be handed over to the customer for co-signing. If the customer has not been represented at the final acceptance test after having been notified in accordance with clause 27, the final acceptance document shall be accepted as accurate.

32. If the final acceptance test shows the works not to be fully in accordance with the contract, innoVfoam BV shall remedy the divergence. If the customer so requires in writing, new tests shall be carried out in accordance with clauses 27-31.

## Taking over

33. Taking over of the works takes place

- when the final acceptance has been satisfactorily completed or are regarded under clause 29 as having been satisfactorily completed or

- when innoVfoam BV and the customer have agreed not to carry out a final acceptance test, when the customer has received an innoVfoam BV's notice in writing that the works has completed, provided that the works are as required for taking-over according to the contract. Minor deficiencies which do not affect the efficiency of the works, shall not prevent taking-over.

The customer is not entitled to use the works or any other part thereof before taking-over. If the customer does so without innoVfoam BV's consent in writing, he shall be deemed to have taken over the works. innoVfoam BV shall then be relieved of his duty to carry out further final acceptance tests.

## Completion innoVfoam's delay

36. The works shall be considered as completed when they are taken over in accordance with clause 33 and 34.

38. If innoVfoam BV anticipates that he will not be able to complete the works in time, he shall forthwith notify the customer in time, in writing, stating the reason and, if possible, when completion can be expected.

39. If innoVfoam BV shall be entitled to an extension of the time for completion if delay occurs:

- \* because of any of the circumstances referred to in clause 67.
- \* as a result of variation of work under clause 19.
- \* as a result of variations under clause 21-25.
- \* by an act or omission on the part of the customer
- \* as a result of suspension under clauses 16, 47 and 70

The extension shall reasonable having regard to all the circumstances. This provision applies regardless of whether the reason for the delay occurs before or after the agreed time for completion.

40. innoVfoam BV is in delay when the works are not completed at the time for completion as defined in clauses 36, 37 and 39. innoVfoam BV's delay does not entitle the purchaser to liquidate damages. No penalty (clause) on delay shall be applicable.

The customer is not entitled to any compensation for losses he might have suffered as a result of innoVfoam BV's delay.

No (other) remedies are available to the customer in case of delay of innoVfoam BV, except where innoVfoam BV has been guilty of gross negligence.

#### Payment

43. Unless otherwise agreed, payment shall be made as follows:

- \*30% of the contract price at order acceptance
- \*30% of the contract price at engineering review
- \*30% of the contract price at arrival of the works at the site
- \*10% of the contract price after taking over.

All payment within 30 days after invoicing.

44. When erection is carried out on a time basis, the following items shall be charged separately:

- a) all *travelling* expenses incurred by innoVfoam BV in respect of their personnel and the transport of their equipment and personal effects (within reasonable limits) in accordance with the specified method and class of travel where specified in the contract.
- b) cost of *board and lodging* and other living expenses, including any appropriate allowances of innoVfoam BV's personnel for each day's absence from their homes, including non-working days and holidays.
- c) the *time worked*, which shall be calculated by reference to the number of hours certified as worked in the time sheets signed by the customer. Overtime and work on weekends, holidays and at night will be charged at special rates. The rates shall be as agreed in the contract or as normally charged by innoVfoam BV. Save as otherwise provided, the hourly rates cover the wear and tear of innoVfoam BV's tools and light equipment.
- d) time necessarily spent on (at the basic hourly working rates):
  - preparation and formalities incidental to the outward and homeward journey.
  - the outward and homeward journeys to which the personnel are entitled in accordance with the current law, regulations and collective agreements in innoVfoam BV's country.
  - daily travel between lodgings and the site if it exceeds 30 minutes and there are no suitable lodgings closer to the site.
  - waiting when work is prevented by circumstances for which innoVfoam BV is not responsible.
- d) any expenses incurred by innoVfoam BV in accordance with the contract in connection of the provision of the equipment by him, including where appropriate a charge for the use of innoVfoam BV's own heavy equipment.
- e) any taxes or dues levied on the invoice and payable by innoVfoam BV in the country where the erection takes place.

45. When erection is carried out for a fixed price, the quoted price shall be deemed to include all the items mentioned above. If the erection is delayed due to a cause for which the responsibility rests with the customer or any of his contractors, the customer shall compensate innoVfoam BV for:

- a) waiting time and time spent on extra journeys.
- b) costs and extra work resulting from the delay, including removing, securing and setting up erection equipment.
- c) additional costs, including costs as a result of innoVfoam BV having to keep his equipment at the site for a longer time than expected.
- d) additional costs for travel and board and lodging for innoVfoam BV's personnel.
- e) additional financing costs and costs of insurance
- f) other documented costs incurred by innoVfoam BV as a result of changes in the erection program.

46. Whatever the means of payment used, payment shall not be deemed to have been effected before innoVfoam BV's account has been fully and irrevocably credited.

47. If the customer fails to pay by a stipulated date, innoVfoam BV shall be entitled to interest from the day on which payment was due. The rate of interest shall be as agreed between innoVfoam BV and the customer. If no rate has been agreed upon, it shall be a rate of 12 percent per annum. In addition innoVfoam BV may after having notified the customer in writing, suspend his performance of the contract until he receives payment. If the customer has not paid the amount due within three months, innoVfoam BV shall be entitled to terminate the contract and to claim compensation for the loss he has incurred. The compensation shall not exceed the contract price.

#### Reservation of Title

48. The works shall remain the property of innoVfoam BV until paid for in full, including payment for the installation and commissioning of the works. Transfer of ownership from innoVfoam BV to the customer will only take place when all financial obligations from the customer to innoVfoam BV in relation to the works, have been fulfilled. The customer shall at the request of innoVfoam BV assist him in taking any measures necessary to protect innoVfoam BV's title to the works in the country concerned.

#### Liability for damage before taking over

49. innoVfoam BV shall be liable for any damage to the works which occurs before the risk has passed to the customer. This applies irrespective of the cause of damage, unless the damage has been caused by the customer or anyone for whom he is responsible. In this case the customer may require innoVfoam BV to remedy the damage at customers' cost.

50. innoVfoam BV shall be liable for damage before taking over of the works, only if it is proved that such damage was caused by negligence on the part of innoVfoam BV or anyone for whom he is responsible in connection with the performance of the contract. innoVfoam BV shall however in no circumstances be liable for loss of production, loss of profit or any other consequential economic loss.

#### Liability for defects and guarantee

51. Pursuant to the provisions of clauses 52-65, innoVfoam BV shall remedy defects in the works resulting from faulty design, materials or workmanship.

52. innoVfoam BV's liability is limited to the defects in the works which appear within a period of one year from taking over. If the daily use of the works exceeds that which is agreed, this period shall be reduced proportionately. If taking-over has been delayed for reasons for which the customer is responsible, innoVfoam BV's liability for defects shall not be extended beyond 14 months.

53. When a defect in a part of the works has been remedied, innoVfoam BV shall be liable for the defects in the repaired or replaced part under the same conditions as those applicable for the original works for a period of one year. For the remaining parts of the works the period as mentioned under 52 shall be extended only by a period equal to the period during which the works have been out of operation as a result of the defect.

54. The customer shall without undue delay notify innoVfoam BV in writing of any defect which appears. Such notice shall under no circumstance be given later than two weeks after the expiry of the period given in clause 52. Where the defect is such that it may cause damage, the notice shall be given immediately. The notice shall contain a description of the defect. If the customer does not notify innoVfoam BV of a defect within the time-limits set forth in this clause, he shall lose his right to have defect remedied.

55. On receipt of the notice under 54 innoVfoam BV shall remedy the defect. Repair shall be carried out on site, unless innoVfoam BV deems it appropriate that the defective part is returned to him for repair or replacement. The customer is obliged to perform the dismantling and mounting activities on site. innoVfoam BV has fulfilled his obligations in respect to the defect when he delivers the customer a duly repaired part or a new part in replacement of the defective part.

56. If the customer has notified innoVfoam BV in accordance with clause 54 and no defect is found for which the contractor is liable, innoVfoam BV shall be entitled for compensation for the costs he has incurred as a result of the notice.

57. The customer shall at his own expense arrange for any dismantling and reassembly of equipment other than the works, to the extent that this is necessary to remedy the defect.

58. Unless otherwise agreed, necessary transport of parts to and from the customer in connection with the remedying of the defects for which innoVfoam BV is liable, shall at the risk and expense of the customer. innoVfoam BV shall follow customers' instructions regarding such transport.

59. Defective parts which have been replaced shall be made available to innoVfoam BV and shall be his property.

60. If, within a reasonable time, innoVfoam BV does not fulfil his obligations under clause 55, the customer may, by notice in writing, fix a final time for completion of innoVfoam BV's obligations.

61. If innoVfoam BV fails to fulfil his obligations within such final time, the customer may himself undertake or employ a third party to undertake remedial works at the risk and expense of innoVfoam BV.

62. innoVfoam BV is not liable for defects arising out of materials provided by or a design stipulated by the customer.

63. innoVfoam BV is liable only for defects which appear under the condition of operation provided for in the contract and under proper use of the works. innoVfoam BV's liability does not cover defects which are caused by faulty maintenance or faulty repair by the customer or by alterations carried out without innoVfoam BV's consent in writing. innoVfoam BV's liability does not cover normal wear and tear.

64. Notwithstanding the provisions of clauses under 51-65 innoVfoam BV shall not be liable for defects in any part of the works for more than 2 years after final acceptance. If final acceptance has been delayed for reasons for which the customer is responsible, innoVfoam BV's liability shall not be extended.

64. Save as stipulated before under 51-64 innoVfoam BV shall not be liable for defects. This applies to any loss the defect may cause including loss of production, loss of profit and other indirect loss. This limitation of innoVfoam BV's liability shall not be applicable if innoVfoam BV has been guilty of gross negligence.

#### Division of liability

66. innoVfoam BV shall not be liable for any damage to property caused by the works after completion and whilst in possession of the customer. Nor shall innoVfoam BV be liable for any damage to products manufactured by the customer or to products of which the customers product form a part. If innoVfoam BV incurs liability towards any third party for such damage to property as described in the preceding paragraph, the customer shall indemnify defend and hold innoVfoam BV harmless. innoVfoam BV and the customer shall be mutually obliged to let themselves be summoned to the court or arbitral tribunal examining claims for damaged lodged against one of them on the basis of damage allegedly caused by the works. The limitation of innoVfoam BV's liability in the first paragraph of this clause shall not apply where innoVfoam BV has been guilty of gross negligence.

#### Force Majeure

67. Either innoVfoam BV or customer shall be entitled to suspend performance of his obligations under the contract to the extent that such performance is impeded or made unreasonably onerous by any of the following circumstances: Industrial disputes and any other circumstance beyond the control of innoVfoam BV such as fire, war, insurrection, requisition, seizure, embargo, restrictions in use of power, an defects or delays in deliveries by sub-contractors caused by any such circumstances referred to in this clause. A circumstance referred to in this clause which had occurred prior to the formation of the contract shall give right to suspension only if its effects on the performance of the contract could not be foreseen at the time of formation of the contract.

68. The party claiming to be affected by Force Majeure shall notify the other party in writing without delay on the intervention and on the cessation of such circumstance. If force Majeure prevents the customer from fulfilling his obligations, he shall compensate innoVfoam BV for expenses incurred in securing and protecting the works.

69. Regardless of what might otherwise follow from these General Sales Conditions, either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is suspended under clause 67 for more than six months.

#### Anticipated non-performance

70. Notwithstanding other provisions in these conditions regarding suspension, each party shall be entitled to suspend performance of his obligations under the contract, where it is clear from the circumstances that the other party will not perform his obligations. A party suspending his performance of the contract, shall forthwith notify the other party thereof in writing.

**Consequential losses**

71. Save as elsewhere stated in these general sales conditions there shall be no liability for either party towards the other party for loss of production, loss of profit, loss of use, loss of contracts or for any consequential, economic or indirect loss whatsoever.

**Disputes and applicable law**

72. All disputes arising in connection with the contract shall be finally settled under the rules of conciliation and arbitration of the international chamber of commerce by one or more arbitrators appointed in accordance with the said rules, supplemented as necessary by the procedural rules of Netherlands Law.

73. innoVfoam BV shall be governed by Netherlands Law.