

VDL Weweler General Conditions for Supplies (Version 1.1, 2020)

1. General Conditions

- 1.1 The scope, quality and all terms and conditions of the supplies or services (hereinafter called 'Supplies') shall be exclusively defined by written declarations of both parties and by written provisions of these conditions (hereinafter called 'Contract'). General terms and conditions of the Customer shall apply only where expressly accepted in writing by VDL Weweler B.V. (hereinafter called 'VDL').
- 1.2 The Contract shall be deemed to have been concluded upon receipt of VDL's written acknowledgment stating its acceptance of the order.
- 1.3 The Customer guarantees the purchase of Supplies indicated by Customer on the basis of any form of forecast(ing)/estimates, within 1 (one) year after such indication, or shall compensate VDL for all direct or indirect cost and expenses incurred, and uncompensated staff time and all other (additional) costs in the event of non-purchase of the respective Supplies by the Customer.
- 1.4 For cost estimates, drawings and other documents (hereinafter called 'Documents'), VDL reserves all rights, title and interest regarding all intellectual property rights including but not limited to copyright in the Documents. Such Documents may not be made available to third parties without the prior written consent of VDL and they shall, upon request, be immediately returned to the VDL if it is not awarded the Contract. Customer's Documents may be made available by VDL to his sub-contractor(s) and/or sub-supplier(s).

2. Prices and Terms of Payment

- 2.1 Unless otherwise agreed, Products will be delivered Ex Works as defined by the ICC INCOTERMS - the edition current at the formation of the contract, with the risk of loss passing to the Customer on the date of delivery. Accordingly prices shall be excluding packing and any taxes (such as property, license, sales, use, value added or similar taxes), duties or imposts payable under applicable law. The Customer agrees to pay or reimburse VDL for any such taxes, duties or imposts which VDL or his subcontractors or sub-suppliers are required to pay. The price payable by the Customer under this Contract shall be referred to in this Contract as the 'Contract Price'.
- 2.2 Payments shall be made to the bank account or payment office issued by VDL.
- 2.3 Unless provided otherwise in writing between the parties, the invoices shall be due for payment immediately and shall be settled no later than on the 30th day counting from the date of invoice, without any cash discount or other deduction allowed. If payment is delayed, the Customer will owe interest on that sum to VDL with effect from the day following the day agreed as the final day of payment up to and including the day on which the Client settles the amount in question. If the parties have not agreed on the final day of payment, the interest is due from 30 days after the sum has become due and payable. The interest is 12% per year, but is equal to the statutory interest if this is higher. For the interest calculation, a part of the month is considered to be a full month. At the end of each year, the amount on which the interest is calculated will be increased by the interest due for that year.

- 2.4 VDL is entitled to offset its debts to the Customer against claims that VDL or companies Affiliated to VDL have against the Customer. In addition, VDL is entitled to offset its claims to the Customer against debts that VDL or companies Affiliated to VDL have against the Customer. Furthermore, VDL is entitled to offset its debts to the Customer against claims against companies Affiliated to the Customer. 'Affiliated companies' means all companies belonging to the same group, within the meaning of Book 2, Section 24b of the Dutch Civil Code, and participation within the meaning of Book 2, Section 24c of the Dutch Civil Code.

- 2.5 For late payments, the Customer owes VDL all extrajudicial costs with a minimum of € 75. These costs are calculated on the basis of the following table, i.e., the principal sum plus interest:
 - on the first € 3,000 15%
 - on the excess up to € 6,000 10%
 - on the excess up to € 15,000 8%
 - on the excess up to € 60,000 5%
 - on the excess from € 60,000 or more 3%The extrajudicial costs actually incurred are due if they are higher than the calculation given above.

- 2.6 If judgment is rendered in favour of VDL in legal proceedings, either entirely or for the most part, the Customer will bear all costs incurred in connection with these proceedings.

3. Retention of Title

- 3.1 Title to the Supplies shall remain with VDL until the Customer has fulfilled all its payment obligations towards VDL under this business relationship.
- 3.2 In case of seizure of the Supplies or similar acts or interventions by third parties which may result in VDL losing title to the Supplies, the Customer shall inform VDL immediately thereof in writing.

4. Time for Delivery and Delay

- 4.1 Performance of the stipulated time for delivery is subject to the timely receipt by VDL of all documents, necessary permits and releases, especially of plans to be provided by the Customer, as well as fulfilment of the agreed terms of payment and other obligations by the Customer. To the extent said conditions are not fulfilled on time, the time for delivery shall be extended accordingly and the Customer shall reimburse VDL all additional cost and expense incurred due to such extension, unless VDL is responsible for the extension.
- 4.2 If non-performance of the time for delivery is due to Force Majeure including impediments, accidents or disturbances, which could not be avoided despite application of due care, the time for delivery shall be extended accordingly.
- 4.3 The Customer shall only be entitled to terminate the Contract for delay, provided that a mutually agreed adequate extension of time granted to VDL has not resulted in delivery. Upon such termination the Customer shall have the obligation to pay for the work already completed or supplies already delivered by VDL. Any further rights and remedies of the Customer than those as per this Article 4 based on a delay, in particular the Customer's right to claim damages shall be excluded.
- 4.4 If dispatch or delivery is delayed at the Customer's request after notice was given by VDL to the Customer of the readiness for dispatch, the Customer will be charged for all related storage costs.
- 4.5 VDL shall be entitled to provide partial Supplies.

5. Transfer of Risk

The risk of loss shall pass to the Customer on the date of delivery, or, if delivery is delayed due to reasons attributable to the Customer, on the contractual agreed delivery date. Delivery will take place according applicable Incoterms.

6. Taking delivery

6.1 Upon taking delivery or upon receipt of shipping documents, the Customer shall check the Supplies and shall notify the last carrier of:

- any defects or damage caused to the Supplies by transport; or of
- objections regarding forwarding or transport of the Supplies.

The Customer is obliged to send a copy of the notification to VDL.

6.2 The Customer shall be entitled to refuse acceptance of delivery only if Supplies are substantially defective, and the Customer provides VDL specific written notice thereof within three (3) days of delivery of such Supplies.

6.3 Acceptance is deemed to have taken place:

- if the Customer puts work into commercial operation; or
- when, for reasons not attributable to VDL, acceptance is delayed for more than six months after its scheduled date.

7. Defects Liability

7.1 VDL shall be liable to the Customer for defects including the non-compliance with express warranties or the failure of the Supplies to meet guarantees as follows:

Upon written request of the Customer VDL shall, at its sole discretion have the option to; repair, replace, or redeliver any Supplies which turn out to be defective within the defects liability period for any defect, which is due to circumstances that existed before the transfer of risk occurred. In case defective Supplies are replaced, title of such defective Supplies shall pass into VDL.

7.2 The Customer shall immediately inspect the Supplies and shall notify VDL in writing of any defects without delay. If the Customer does not notify VDL in writing, the Supplies are deemed to have been accepted with respect to such defects.

7.3 VDL shall be given adequate time and opportunity to remedy the defect. For this purpose, the Customer shall, if applicable, grant VDL working access to the non-conforming Supplies including disassembly and reassembly without cost to VDL. The Customer shall at VDL expense and upon request of VDL send the defective Supplies to VDL.

7.4 VDL shall not be liable for defects which only insignificantly impair the use of the respective Supplies, unsubstantial deviations of the Supplies from the specification of the Supplies, normal wear and tear or damage, arising after the transfer of risk, from faulty or negligent handling, excessive strain, use of unsuitable appurtenances, defective installation, erection, modification, (pre)commissioning not carried out by VDL, inappropriate foundation or particular external influences not explicitly assumed to impact on the Supplies under the Contract.

7.5 VDL shall not be liable for any costs and/or damages if the Customer or any third party carries out modifications or repairs, unless agreed otherwise in writing. At any case, VDL shall not be liable if repairs are carried out improperly.

7.6 The defects liability period and process is defined in the 'VDL Weweler General Defects Liability Statement Trailer' or the 'VDL Weweler General Defects Liability Statement Truck', which both can be obtained by going to the following website and downloading the file(s):
<https://www.vdlweweler.nl/support/downloads>.

7.7 The defects liability obligations of VDL as set out above are the sole and exclusive liability obligations for the Supplies and are in lieu of all other warranties (express or implied) under the law(s).

8. Industrial Property Rights, Copyright and Software

8.1 VDL shall provide the Supplies free from third parties' industrial property rights and copyrights (hereinafter called "Intellectual Property Rights").

8.2 In the event a third party asserts legitimate claims against the Customer because of an infringement of Intellectual Property Rights by the Supplies, VDL shall be liable to the Customer as follows:

- VDL shall at his own option and expense, either obtain a right to use the Supplies, modify the Supplies so as not to infringe the Intellectual Property Rights or replace or redeliver the relevant Supplies. If this is not reasonably possible for VDL, the Customer shall be entitled to terminate the Contract whereupon VDL shall take back the relevant Supplies and refund the Contract price for such Supplies.
- VDL's aforesaid obligations shall exist only provided the Customer has immediately notified VDL in writing of the claims asserted by the third party, the Customer has not acknowledged an infringement, and all countermeasures and settlement negotiations are reserved to VDL. If the Customer stops using the Supplies to reduce the damage or for other important reasons, he shall be obliged to make it clear to the third party that the suspended use does not mean acknowledgment of an infringement of Intellectual Property Rights.

VDL shall have the exclusive right to conduct the legal defence.

8.3 Claims of the Customer shall be excluded if the infringement of Intellectual Property Rights was caused by specific demands of the Customer, by a use of the Supplies not foreseeable by VDL or by the Supplies being altered by the Customer or being used together with products not provided by VDL.

8.4 Further rights and remedies of the Customer than those as per this Article 8 based on an infringement of third parties' Intellectual Property Rights; in particular the Customer's right to claim damages, shall be excluded.

8.5 The Customer may use the plans and drawings provided by VDL only for the intended purpose. The Customer shall not be entitled to use these plans and drawings for other purposes, beyond operation and maintenance especially not for the reproduction of the Supplies or parts of the Supplies.

8.6 VDL shall not grant the Customer an exclusive right to use IPR/Know-How/Software developed by VDL unless otherwise agreed. If such right is granted, any transfer thereof without VDL's prior written approval is prohibited.

8.7 If the Supplies also compromise any of software products including any relating documentation, then, unless otherwise agreed, the Customer shall have only the non-exclusive right to use software in machine-readable object code form in connection with the Supplies as specified in the operation documentation, if any. The Customer is only allowed to make two back-up copies of such software. The use of the back-up copies is limited to the right to use as described above.

8.8 The Customer may transfer its rights in the software only in connection with the sale or other transfer of the Supplies to a third party.

9. Adaptation of Contract, Changes

9.1 Either party may at any time request in writing changes, modifications or additions to the scope of the Works (hereinafter referred to as "Variation"). Upon receipt of a Variation request, VDL shall provide the Customer with a written quotation for the requested Variation, specifying the effects of the requested Variation on the Contract, including any necessary adjustment of the Contract Price, time schedules and agreed dates, scope of the Works and any other affected provisions of the Contract.

9.2 If the Customer wishes to proceed with a requested Variation on the basis of VDL's quotation, the Customer shall notify VDL thereof in writing within 14 days of receipt of the quotation. VDL is not obliged to give effect to the Variation until it has been agreed in writing by the parties.

9.3 In case applicable law, rules and regulations changes or other relevant laws or changes of engineering standards have a substantial impact on the content of Supplies or their performance or in case of unforeseeable events in the context of Clause 4.2, the Contract shall be adapted appropriately in order to account for the changed circumstances, including but not limited to an increase of the total Contract Price agreed for the provision of the Supplies under the Contract and on the agreed dates for delivery of the Supplies as at the date of the Contract. Where this is not economically reasonable, VDL shall have the right to terminate the Contract in accordance with the termination provisions for Force Majeure below.

10. Force Majeure

10.1 Force Majeure events means any event and the consequences thereof, which are beyond the reasonable control of a party or its subcontractor and shall include but are not limited to mobilization, war, civil insurrection, terrorism, acts of government, non-granting of required export permissions, epidemics, pandemics, strike, lock-out, raw material shortages, lack of transportation, interruption of electricity, forces of nature and impediments arising out of national or international foreign trade or custom requirements/regulations/restrictions or any embargoes or other sanctions.

10.2 The party affected by Force Majeure shall notify the other party thereof as soon as possible and will provide information to verify that it is considered as Force Majeure and will estimate how long the situation will last.

10.3 Compliance with obligations affected by Force Majeure will be suspended for at least the duration of the cause and the affected party will not be liable towards the other party in any way due to the occurrence of Force Majeure.

10.4 Once the Force Majeure event has finished, the parties will agree on the measures and costs required to maintain, if possible the project schedule or establish a new schedule.

In any case, the parties will make a reasonable effort to resume performance as soon as possible under the best conditions and with minimum delay.

10.5 Notwithstanding any other provision in the Contract, parties shall be entitled to terminate the Contract when a Force Majeure event has continued for more than 180 days. Termination will take place according to Article 14.

11. Limitation Liability

11.1 The liability of VDL is limited to VDL's liability due to imputably failing to perform an agreement and shall be limited to compensating direct damage only. However, these damages shall not be compensated if the agreement is rescinded or terminated by or at the request of the Customer.

11.2 VDL's total aggregate liability to compensate damage or costs under any Contract, irrespective of the legal basis, shall be limited to the lower of i) 100% of the price of the relevant Supplies with regard to the respective claim; and ii) the amount which the insurer of VDL actually pays out with regard to the respective claim.

11.3 In no event shall VDL be liable towards the Customer, and the Customer shall waive and release VDL, from all liability for, loss of profit, loss of revenue, loss of expected savings, loss of income, rent or holding costs, loss of expected production, opportunity costs, loss of business (including loss or reduction of goodwill or opportunity) and damage to reputation (regardless of whether any or all of these things are considered to be indirect or consequential losses or damage), loss of information and/or data, for claims arising from the Customer's contracts with third parties, and/or any consequential loss. This exclusion of liability, however, does not apply to unlawful intent.

11.4 The aforesaid shall not apply if liability is mandatory, e.g. in accordance with the Product Liability Act.

11.5 These limitations of liability shall also apply for the benefit of VDL's subcontractors, suppliers, agents, directors, officers and employees.

11.6 Any and all liability of VDL, irrespective of the legal basis, under this Contract shall cease with the expiry of the defects liability period of the Supplies.

11.7 The Customer shall indemnify VDL in excess of the limitation of liability if the ultimate owner/end-user of VDL's Supplies can make claims directly against VDL.

12. Transfer

12.1 The Customer may not transfer the rights and obligations arising from the Contract to a third party without prior written approval of VDL.

12.2 VDL may transfer, assign, or novate the Contract or any part of it to Affiliated companies of VDL Groep B.V.

13. Confidentiality

Any information made available to the Customer by VDL in connection with the Contract shall be treated as confidential. The Customer shall use the information only for the purposes specified in the Contract. This confidentiality obligation shall not apply to information which the Customer can demonstrate:

- is or becomes part of the public domain without violation of the Contract; and/or
- is known and on record at the Customer prior to disclosure by VDL; and/or
- is lawfully obtained by the Customer from a third party who is not bound by similar confidentiality obligations; and/or
- is developed by the Customer completely independently of any such disclosure by VDL; and/or
- is ascertainable from a commercially available product.

Notwithstanding the above, the Customer may comply with a court order compelling disclosure of confidential information. In that event the Customer must provide VDL with reasonable prior notice, assist and cooperate with the Customer if the Customer seeks to limit or resist the requirement for the confidential information to be disclosed. The obligations set forth in this Article 13 shall survive any termination of the Contract.

14. Termination and Suspension

14.1 A party shall be entitled to terminate the Contract by written notice:

- if any proceeding is instituted against the other party seeking to adjudicate such party as bankrupt or insolvent; or if the other party makes a general assignment for the benefit of its creditors, or if the receiver is appointed on account of the insolvency or the other party, and, in the case of any such proceeding instituted against the other party (but not by the other party itself), if such proceeding is not dismissed within 45 days of such filing; or
- if the other party is insolvent or itself files a petition seeking to take advantage of any law relating to bankruptcy, insolvency, winding up or composition or readjustment of debts.

Upon such termination the Customer shall have the obligation to pay for the work already completed or delivered by VDL. The Customer's additional cost to complete the works (e.g. excess cost for a replacement contractor) shall be the Customer's sole and exclusive remedy.

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14.2 In the event any of the following occurs VDL may at its option suspend the provision of its obligation under the Contract:

- the Customer fails to make payment of any amount within 30 days after it has become due and payable; or
- the Customer is in materially breach, or fails to fulfil its obligations necessary for VDL to deliver or complete the Supplies; or
- delivery of Supplies is prevented by export restrictions for more than 180 days; or
- the Customer is insolvent or any proceeding as referred to in Clause 14.1 is instituted against the Customer.

14.3 In the event VDL suspends the provision of its obligations the Customer shall pay all (additional) cost incurred due to such suspension to VDL. VDL shall be entitled to take back Supplies and the Customer shall be obliged to return the Supplies. The taking back, the assertion of the retention of the title or of a security interest or the taking possession through legal right or process of the Supplies by VDL shall not mean termination of the Contract and restitution, unless expressly stated by VDL.

14.4 Notwithstanding any other provisions of the Contract, VDL may terminate a part or the whole Contract within 30 days written notice to the Customer in case the requirements set forth in Clause 14.2 (except for the last point) are given. Upon such termination the Customer agrees to pay VDL for all unpaid invoices and uncompensated staff time and all (other additional costs) and expenses up to the date of termination.

15. Compliance with Export Control Regulations

15.1 If the Customer transfers the Supplies (hardware and/ or software and/ or technology as well as corresponding documentation and/ or works and services, regardless of the mode of provision, and/or including all kinds of technical support) provided by VDL to a third party worldwide, the Customer shall comply with all applicable national and international (re-) export control regulations. In any event the Customer shall comply with the (re-) export control regulations of the Netherlands, of the European Union and of the United States of America.

15.2 If required to conduct export control checks, the Customer, upon request by VDL, shall promptly provide VDL with all information pertaining to a particular end user, destination and intended use of the Supplies provided by VDL, as well as any export control restrictions existing.

15.3 The Customer shall indemnify and hold harmless VDL from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any non-compliance with export control regulations by the Customer, and the Customer shall compensate VDL for all losses and expenses resulting therefrom.

15.4 VDL shall not be obligated to fulfil any Contract if such fulfilment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions.

15.5 The Customer shall inform VDL about the standards and regulations applicable to the Supplies at the place of business of the Customer and/or the place of delivery.

16. Additional conditions with respect to Dangerous Materials

The Customer ensures that during the performance of work on its premises or at the premises of an associated third party, i) VDL employees will not be exposed in any way to hazardous substances without proper protection; and ii) that adequate (statutory) measures have been taken by the Customer or the associated third party, to ensure that there is not any health risk for VDL employees involved. The Customer shall indemnify and hold harmless VDL from and against any claims, proceeding, action, loss, cost and damages from VDL employees or other persons, who suffer from a sickness that can be related to working with goods dangerous for health, during performance of work at the Customer's premises or at an associated third party's premises.

17. Compliance with Laws and Regulations

The Customer observes that it and any party acting on its behalf (including its employees) will comply with all applicable laws and regulations under or in relation to any Contract or any other (future) agreement between the Customer and VDL worldwide, including, without limitation any laws and regulations relating to taxation, anticorruption, antitrust, anti-money laundering or any criminal law, rule or regulation. If, during the term of the Contract or any (future) agreement, the Customer becomes aware that any of the obligations set forth in this clause have not been met, the Customer must notify VDL in writing within 10 working days. This also applies in the event that any officer or employee of the Customer is asked, directly or indirectly, by a third party to violate any law or regulation referred to in this clause.

18. Dispute Settlement and Applicable Law

- 18.1 All disputes arising out of or in connection with the Contract, including any question regarding its existence, shall exclusively be governed and construed in accordance with the laws of the Netherlands without giving effect to its conflict of law provisions.
- 18.2 All disputes which might arise between the parties in connection with this Contract or with agreements resulting from this Contract, including disputes about its existence and validity, will – unless any mandatory statutory provision dictates otherwise – exclusively be judged by the competent court in the district of Oost-Brabant, the Netherlands. In the event the other party has its statutory seat in a country in which a decision of a Dutch court is not enforceable, the dispute will be exclusively settled by means of arbitration in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (NAI). The place of arbitration in that event shall be Amsterdam, the Netherlands.
- 18.3 The application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

19. Miscellaneous

- 19.1 Mistakes, unintended gaps and contradictions in the Contract are to be treated and construed in accordance with the spirit of the Contract on the basis of mutual trust and of the mutual interests of both parties.
- 19.2 Any amendments, changes or additions to the Contract must be made in writing in the form of a written agreement signed by authorised representatives of both parties.
- 19.3 No delay or omission by either party in exercising any right, power or remedy provided by law or under this Contract shall affect, impair or operate as a waiver of such right, power or remedy.
- 19.4 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.
- 19.5 In the event of legal invalidity of individual stipulations, the other parts of the Contract shall remain valid. The aforesaid shall not apply where compliance with the terms of the Contract would constitute unacceptable hardship for either party.