

GENERAL TERMS AND CONDITIONS

Article 1. General

1. These terms and conditions apply to any offer, quote and agreement between Elemntz BV, hereafter referred to as: "the User"), and the Other Party to which Elemntz BV has declared this to be applicable, insofar as these terms and conditions are not explicitly deviated from by the parties in writing.
2. The current terms and conditions also apply to all agreements concluded with Elemntz BV, the performance of which requires Elemntz BV to engage third parties.
3. These general terms and conditions have also been documented for the employees of Elemntz BV and its management.
4. The applicability of any purchase or other terms and conditions of the Other Party are explicitly rejected.
5. If one or more provisions of these general terms and conditions are declared fully or partially nullified or removed at any time, then that stated in the remainder of these general terms and conditions remains applicable in full. In that case, Elemntz BV and the Other Party will meet in order to agree new provisions to replace the nullified or removed provisions, whereby the aim and intent of the original provisions are followed to the extent possible.
6. If the intention of one or more provisions of these general terms and conditions is unclear, then it must be clarified within the meaning of the spirit of these provisions.
7. If a situation arises between the parties that is not provided for in these general terms and conditions, then this situation must be assessed in the spirit of these general terms and conditions.
8. If Elemntz BV does not always demand the strict compliance with these terms and conditions, this does not mean that the provisions thereof do not apply or that Elemntz BV would in any way lose the right to demand the strict compliance with the provisions of these terms and conditions in other cases.

Article 2 Quotes and offers

1. All quotes and offers made by Elemntz BV are free of obligation unless the quote states a period of acceptance. A quote or offer is cancelled if the product to which the quote or offer relates has in the meantime become unavailable.
2. Elemntz BV is not obliged to honour its quotes or offers if the Other party can reasonably understand that the quotes or offers, or a part thereof, contain an apparent mistake or typo.
3. The prices listed in a quote or offer are including or excluding VAT (depending on the purchaser) and other government levies and any costs to be incurred in the performance of the agreement, such as travel and accommodation, postage and administrative costs, unless otherwise is stated.
4. If the acceptance (whether or not on minor points) deviates from the offer stated in the quote or offer, then Elemntz BV shall not be bound by it. The agreement will in that case not be concluded pursuant to this deviating acceptance, unless Elemntz BV states otherwise.
5. A composite price quote does not oblige Elemntz BV to perform a part of the assignment for a corresponding part of the price quoted. Offers and quotes do not automatically apply to future orders.

Article 3 Contract duration; delivery periods, performance and amendment of the agreement; price increase

1. The agreement between Elemntz BV and the Other party is entered into for an indefinite period unless otherwise follows from the nature of the agreement or if the parties have explicitly agreed otherwise in writing.
2. If a period is agreed or indicated for the completion of certain activities or delivery of certain items, then this never constitutes a final deadline. If a period is exceeded, the Other party is therefore required to send Elemntz BV a written notice of default. As such, Elemntz BV must be offered a reasonable period during which it can still perform the agreement.
3. Elemntz BV is authorised to have certain activities performed by third parties.
4. Elemntz BV is entitled to perform the agreement in different phases and to invoice the individual parts performed separately.
5. If the agreement is performed in phases, Elemntz BV can suspend the performance of those parts that belong to the next phase, until the Other party has approved the results of the preceding phase in writing.
6. If Elemntz BV required information from the Other Party for the performance of the agreement, the performance period does not commence until the Other Party has made the correct and complete information available to Elemntz BV.
7. If, during the performance of the agreement, it becomes apparent that the agreement needs to be changed or added to in order for it to be performed correctly, the parties will change the agreement in a timely fashion and in mutual consultation. If the nature, scope or content of the agreement has been changed, upon request or instruction of the Other party, the competent authorities or otherwise, thereby changing the quality and/or quantity of the agreement, this could have consequences for the original agreement. This could lead to an increase or decrease of the price originally agreed upon. If possible, Elemntz BV will provide an estimate in advance. The original period of execution can change as a result of the agreement being changed. The Other Party accepts the possibility of changing the agreement, including changes in price and the period in which the assignment is performed.
8. If the agreement is amended, including any addition thereto, then Elemntz BV is authorised to perform this first upon the approval thereto by an authorised representative of Elemntz BV and the Other party has agreed with the price quotes and other conditions, including the moment of performance to be determined at that time. Not performing the changed agreement (in time) will also not result in a default of Elemntz BV, nor does it constitute a grounds for the Other Party to dissolve the agreement.
9. Without being in default, Elemntz BV can refuse a request for the amendment of the agreement, if this would affect the quality or quantity of, for example, the activities to be performed or of the goods to be delivered in that respect.
10. If the Other Party is declared in default in the sound meeting of that he is bound to do in respect of Elemntz BV, then the Other Party is liable for all the damage (including costs) incurred by Elemntz BV as a direct or indirect result thereof.
11. If upon concluding the agreement Elemntz BV has agreed a certain price, Elemntz BV is authorised to increase the price in the event of the following circumstances, even if the price was not given subject to a reservation.
 - If the price increase is the result of a change of the agreement;
 - if the increased price results from an authority to which Elemntz BV is subject or an obligation held by Elemntz BV subject to under law;
 - In all other cases, in the understanding that the Other party does not act in the performance of a profession or company, is authorised to dissolve the agreement by way of a written statement if the price increase amounts to more than 10% and takes place within three months after having concluded the agreement, unless Elemntz BV is still prepared to perform the agreement on the basis of that originally agreed, or if it has been agreed that the delivery will take place later than three months after the purchase.
12. If the products to be supplied by Elemntz BV, via third parties, are delivered but do not work correctly or have been performed on the basis of the initially approved design (whereby

it must be added that the goods delivered by Elemntz BV are handmade and that one must take into account that imperfections could arise as this process in combination with the goods cannot be 100% controlled. This cannot be regarded as incorrect and also does not give an entitlement to the returning or reimbursing of the good(s) delivered by Elemntz BV. If this results in a dispute, then Elemntz BV will act as an intermediary between 'third parties, i.e. the supplier' and the purchaser.

The subsequent costs are for the account of the supplier of the goods, provided he can show that he has complied with the terms imposed and is not to blame for the inaccurate operation or appearance of the goods. In that case the supplier will be indemnified and any costs incurred will be for the account of the purchaser.

Article 4 Suspension, dissolution and intermediate termination of the agreement

1. Elemntz BV is authorised to suspend the meeting of the obligations or dissolve, the agreement, effective immediately, if:
 - the Other Party does not or does not fully meet the obligations of the agreement or fails to do so on time, after the agreement has been concluded;
 - after concluding the agreement Elemntz BV has learned that the circumstances provide good grounds to fear that the Other party will not meet its obligations.
 - upon concluding the agreement, the Other Party that is requested to raise surety for the meeting of its obligations of the agreement, but fails to do so or provides insufficient surety.
 - If, due to a delay caused by the Other Party, it can no longer be demanded from Elemntz BV that he will meet the agreement under the originally agreed conditions, Elemntz BV is entitled to dissolve the agreement.
 - If circumstances arise that are of such a nature that the compliance of the agreement is impossible or the unchanged maintaining of the agreement cannot reasonably be demanded of Elemntz.
2. If the dissolution of the agreement is attributable to the Client, Elemntz BV is entitled to payment of damages, including direct and indirect costs resulting thereof.
3. If the agreement is dissolved, the claims Elemntz BV holds on the Other party are payable immediately. If Elemntz BV suspends the compliance with the obligations, then it retains its legal claims under the law and the agreement.
4. If Elemntz BV proceeds to the suspension or dissolution of the agreement on the basis of the grounds listed in this article, he is in no way obliged to pay damages or costs resulting thereof or to pay a compensation, while the Other party MUST pay damages or a compensation on the basis of an attributable shortcoming.
5. If the agreement is intermediately terminated by Elemntz BV, Elemntz BV will consult with the Other party to ensure the activities to be performed are transferred to a third party. This does not apply if the termination can be attributed to the Other Party. Unless the intermediate termination is attributable to Elemntz BV, then the costs for transfer are invoiced to the Other party. Elemntz BV will inform the Other party of the scope of these costs in advance, insofar possible. The Other party must pay these costs within the period stipulated, unless Elemntz BV states otherwise.
6. In the event of a liquidation, (a requested) suspension of payment or bankruptcy, retention - if and insofar as the retention has not been lifted within three months- of the Other Party, or a debt restructuring or any other circumstance as a result of which the Other Party is unable to freely dispose of its assets, then Elemntz BV is free to immediately terminate the agreement, effective immediately, or to cancel the order or the agreement, without any obligation to payment of any damages or compensation. In that case, the claims Elemntz BV holds on the Other party are payable immediately.
7. If the Other Party cancels all or part of an order he has placed, then the items ordered or made ready plus any supply, disposal or delivery costs and the labour hours reserved for the performance of the agreement are directly recharged to the Other Party.

Article 5 Force majeure

1. Elemntz BV is not obliged to meet any obligation he has in respect of the Other Party, if he is prevented from doing so due to a circumstance that is not attributable to guilt, and is not payable by the User pursuant to the law, a legal act or generally prevailing opinion.
2. Force majeure is defined in these general terms and conditions as that stated in this respect in legislation and case law plus any additional causes, foreseen or unforeseen, over which Elemntz BV has no power of control, but that do cause the inability of Elemntz BV to meet his obligations. Elemntz BV is also authorised to invoke a force majeure if the circumstance hindering the compliance with the agreement, commences after Elemntz BV was supposed to comply with the agreement.
3. Elemntz BV can suspend the obligations of the agreement for the duration of the force majeure. If this period lasts longer than two months, each party is entitled to dissolve the agreement, without obligation to payment of damages to the other party.
4. Insofar as Elemntz BV did meet part of its obligations of the agreement at the moment the force majeure commenced or expects to be able to meet these, and a separate value can be attributed to that part, then Elemntz BV is authorised to separately invoice the part that it has completed or expects to complete. The Other Party must pay this invoice as if it were a separate agreement.

Article 6 Payment and debt collection costs

1. The invoice must be always be paid within 14 days of the date of invoice, in the currency stated by Elemntz BV in its invoice, unless Elemntz BV states otherwise in writing. Elemntz BV is entitled to send periodic invoices.
2. If the Other Party fails to pay the invoice on time, then the Other Party is legally in default. The Other party must then pay interest. In the event of a consumer purchase, the interest is equal to the statutory late payment interest. In all cases the Other party must pay an interest of 1% per month, unless the statutory interest is higher, in which case the statutory interest is payable. The interest on the receivable will be calculated from the moment that the Other Party is in default up to the moment the full invoiced amount has been settled.
3. Elemntz BV is entitled to use the payments made by the Other Party for the settlement of the costs first, then to settle the interest that has fallen due and finally to settle the main sum due and the current interest.
4. Elemntz BV is entitled, without being in default, refuse an offer for payment, if the Other Party appoints a different settlement order of the payment. Elemntz BV can refuse the full settlement of the main sum if the Other Party is unable to settle the interest that has fallen due, the current interest and the late payment costs.
5. Objections against the height of an invoice do not suspend the payment obligation.
6. If the Other Party is in default or fails to meet his obligations (on time), then all the reasonable costs in for extra judicial settlement are payable by the Other Party. The extra judicial costs are charged on the basis of normal Dutch debt collection practise as they apply at that time; this is currently the calculation method according to Report Voorwerk II. If Elemntz BV incurred higher costs for the debt collection then would have been reasonably necessary,

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then the actually incurred costs are eligible for compensation. Any judicial and execution costs incurred will also be recharged on the Other Party. The Other Party must also pay interest on the debt collection costs payable.

Article 7 Retention of title

1. All the items delivered to Elemntz BV as part of the agreement remain the property of Elemntz BV until the Other Party has satisfactorily met all the obligations of the agreement(s) concluded with Elemntz BV.
2. The items delivered by Elemntz BV, that are subject to retention of title pursuant to section 1, cannot be resold and can never be used as a form of payment. The Other Party is not entitled to pawn items that are subject to the retention of title or to mortgage them in any other way.
3. The Other Party must always do that what can reasonably be expected of him to secure the retention of title of Elemntz BV.
4. If third parties impound items that were delivered under retention of title or wish to impose or apply any rights thereon, then the Other Party is obliged to immediately inform Elemntz BV thereof.
5. The Other Party is obliged to insure the items subject to retention of title and to keep them insured against fire, explosion and water damage, theft and to make the policy of this insurance available to Elemntz BV upon first request. If any payments are made under the insurance, Elemntz BV is entitled to receiving these payments. Insofar necessary, the Other Party promises in advance to provide his cooperation for Elemntz BV to all that would (appear to) be necessary or desired in that respect.
6. In the event Elemntz BV wishes to exercise the retention of title indicated, the Other Party, in advance, provides his unconditional and irrevocable permission to Elemntz BV and the third parties appointed by Elemntz BV to enter all those areas where the properties of Elemntz BV are located and to retrieve these items.

Article 8 Guarantees, research and complaints

1. The items to be supplied by Elemntz BV meet the usual conditions and norms that can reasonably be imposed at the time of delivery and for which they would normally be used in the Netherlands. The guarantee stated in this article applies to items that are intended for use within the Netherlands. For use outside the Netherlands, the Other Party is responsible for verifying whether the use thereof is suitable for the use there and meet the conditions that apply in this respect. Elemntz BV can in that case impose other guarantees and other conditions for the goods to be supplied or the activities to be performed.
2. The guarantee stated in section 1 of this article applies for a period of one year after delivery, unless the nature of the delivered items require otherwise or the parties have agreed otherwise. If the guarantee issued by Elemntz BV concerns an item that was manufactured by a third party, then the guarantee is limited to that issued by the manufacturer of the item, unless otherwise is stated. After the guarantee period has lapsed any costs for repair or replacement, including administration, delivery and call-out costs, will be invoiced to the Other Party.
3. Any form of guarantee is cancelled if a failure has occurred as a result or as a consequence of inexact or inappropriate use thereof or use after the sell-by-date, incorrect storage or maintenance thereof by the Other Party and/or third parties when, without written permission of Elemntz BV, the Other Party or third parties have made changes to the items or have tried to make changes, have attached other items that should not be attached to it or if these were processed or changed in a way that was not prescribed. The Other Party is also not eligible to a guarantee if the failure arose or is the result of circumstances on which Elemntz BV could not exert any influence, including weather conditions (such as, but not limited to, extreme rain or temperature) etc.
4. The Other Party must (have) that delivered checked immediately when the time at which the items were made available to him or when the activities in question were performed. The Other Party must check whether the quality and/or quantity of that delivered is in accordance with that agreed upon and meets the conditions agreed upon by the parties. Any visible defects must be reported to Elemntz BV in writing within two months after discovery. The report must contain a description of the defect that is as detailed as possible, in order to enable Elemntz BV to respond adequately. The Other Party must enable Elemntz BV to have a complaint researched.
5. If the Other Party reports a complaint in time does not relieve him from his payment obligation. The Other Party will in that case still be obliged to purchase and pay the other items ordered, unless it is not awarded an independent value.
6. If a default is notified later, then the Other party is no longer entitled to repair, replacement or payment of damages unless the nature of the case or other circumstances of the case result in a longer period.
7. If it is clear that an item is faulty and this has been reported in time, then Elemntz BV will at its discretion replace or ensure the repair of the faulty item within a reasonable period after it has been returned, or, if it cannot reasonably be returned, after the written notification of the Other Party concerning the failure, or will pay a compensation to the Other Party. In the event of replacement, the Other Party must return the replaced item to Elemntz BV and to grant ownership to Elemntz BV, unless Elemntz BV states otherwise.
8. If it becomes clear that a complaint is unfounded, then the costs incurred, including research costs at the side of Elemntz BV, are fully payable by the Other Party.

Article 9 Liability

1. If Elemntz BV should be liable, this liability is limited to that stated in this provision.
2. Elemntz BV is not liable for damage of any nature, arising as a result of Elemntz BV working on the basis of incorrect and/or incomplete information provided by the Other party.
3. Elemntz BV is only liable for direct damages suffered.
4. Direct damage exclusively refers to:
 - the reasonable costs made to determine the cause and the scope of the damage, insofar as the determination relates to direct damage within the meaning of these general terms and conditions;
 - the possible reasonable costs incurred in order to have the lacking performance of Elemntz BV meet the conditions of the agreements, insofar as these can be attributed to Elemntz BV;
 - the reasonable costs incurred in order to prevent or limit damage, insofar as the Other party can prove that these costs have led to a limitation of direct damage within the meaning of these general terms and conditions.
5. Elemntz BV is never liable for indirect damage, including consequential damage, loss of profit, lost savings and damage due to business interruption. In the event of a consumer sale the limitations of this article do not exceed that permissible pursuant to article 7:24 (2) Dutch Civil Code.
6. If Elemntz BV should be liable for any damage, then the liability of Elemntz BV is limited to no more than twice the invoiced value of the order, at least the part of the order to which the liability relates.

7. The liability of Elemntz BV is in any event always limited to the amount that the insurer would pay in such an event.
8. The limitations of the liability included in this article do not apply when the damage can be attributed to intent or gross guilt of Elemntz BV or its managing subordinates.

Article 10 Validity period

1. In deviation of the legal limitation periods, the limitation period of all claims and defences against Elemntz BV and the third parties engaged by Elemntz BV for the performance of an agreement, amounts to one year.
2. That stated in subsection 1 does not apply to legal claims and defences that are based on facts that would justify the statement that the delivered goods would not be in conformity with the agreement. The validity of such claims and defences lapse two years after the Other party has informed Elemntz BV of such a non-conformity.

Article 11 Transfer of risk

1. The risk of loss, damage or devaluation transfers to the Other Party the moment the items are placed in the power of the Other Party.

Article 12 Indemnification

1. The Other party indemnifies Elemntz BV against any claims of third parties that suffer damages in relation to the performance of the agreement and the cause of which cannot be attributed to Elemntz BV.
2. If Elemntz BV were to be held liable for damages by third parties in this respect, then the Other party must assist Elemntz BV in extra judicial and legal proceedings and must immediately do everything that may be expected of him in such an event. Should the Other party be in default in taking adequate measures, Elemntz BV is entitled, without a notice of default, to do so himself. All the costs incurred and damages suffered by Elemntz BV and third parties as a result thereof are for the full account and risk of the Other party.

Article 13 Intellectual Property

1. Elemntz BV retains the rights and authorities attributed to him on the basis of the Copyright Act and other intellectual property regulations and legislation. Elemntz BV is entitled to use the knowledge gained during the performance of an agreement for other purposes, insofar Elemntz BV does not inform third parties of any strictly confidential information of the Other Party.

Article 14 Applicable law and disputes

1. All the legal relations to which Elemntz BV is a party are exclusively subject to Dutch law, even if an agreement is fully or partially performed abroad or if the party involved in the legal relation resides abroad. The applicability of the Vienna Sales Convention is excluded.
2. The parties will first do their utmost to resolve disputes amicably. Any dispute that cannot be resolved by the parties will be brought before the courts.

Article 15 Location and amendment terms and conditions

1. The version that applies is the latest version filed or the version as it applied upon the establishment of the legal relations with Elemntz BV.
2. The Dutch version of the general terms and conditions takes precedence over any other versions.