

# INDEX ELEKTRO B.V. GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT

## 1 – General

**1.1** These General Terms and Conditions shall apply between Index Elektro BV and the Customer to all products, services, (oral or written) offers, bids, contracts and statements of work in the broadest sense of the word (hereinafter: a “contract”).

**1.2** The Customer expressly represents that it accepts these General Terms and Conditions to the exclusion of any general terms and conditions it uses, unless Index Elektro BV and the Customer have expressly agreed otherwise in writing. In the event that the parties have agreed in writing that other terms and conditions shall apply, the latter terms and conditions shall apply only for the specific order for which they have been agreed.

**1.3** Any conflicting purchasing terms and conditions of the Customer are hereby expressly rejected. Any such purchasing terms and conditions shall apply only if Index Elektro BV expressly confirms them in writing. Common law will not be applicable.

## 2 – Offers, purchase orders

**2.1** All of our (oral or written) offers shall be free of obligation. An offer can be accepted by the Customer, but will only become valid after written confirmation by Index Elektro BV. Confirmation of an order means its contents are correct, unless the Customer files a written protest within eight days of reception of the confirmation, and before execution of the order by Index Elektro BV has started.

**2.2** Orders from the Customer, in whatever form, which have been confirmed by Index Elektro BV are deemed binding.

**2.3** In the event the Customer has a request to change and/or add to the specifications for the work to be produced and delivered by Index Elektro BV, it shall notify Index Elektro BV accordingly in writing and within five days. Whether the change will be accepted is dependent on the status of the order, to be decided by Index Elektro BV.

## 3 – Prices

**3.1** Pricing by Index Elektro BV is based on current procurement costs, exchange rates, legal charges and other factors.

**3.2** All prices and rates are not including sales tax (VAT).

**3.3** Orders with a value of less than €250,00 will be additionally charged with €25,00 for office costs and transportation.

**3.4** Offers will be valid for 30 days, unless agreed otherwise in the offer, bid or contract. If after this period one or more of the conditions mentioned in 3.1 change, Index Elektro BV has the right to adjust the offer to the changed conditions.

**3.5** In the event the Customer has a request to change and/or add to the specifications for the work to be produced and delivered by Index Elektro BV, it shall notify Index Elektro BV accordingly. Index Elektro BV shall then charge the Customer for any additional work to be performed as a result of such change(s) and/or addition(s).

## 4 – Delivery

**4.1** The delivery deadlines stated by Index Elektro BV have been fixed to the best of Index Elektro BV's knowledge and in accordance with Index Elektro BV's best intentions on the basis of the information of which Index Elektro BV was aware at the time the contract was concluded; these delivery deadlines shall be observed to the maximum possible extent but are nonbinding. Index Elektro BV's failure to meet any delivery deadline shall not put Index Elektro BV in default and shall not entitle the Customer to dissolve the contract. In case delivery has not taken place one month of more after the delivery deadline, the Customer has the right to cancel the order in whole or for the part which has not been delivered. Cancellation shall be done by registered letter, which has to be received by Index Elektro BV before delivery of goods has started.

**4.2** The Customer has purchase obligation.

**4.3** In case of prepaid delivery, transportation costs and risks are for Index Elektro BV. In all other cases, transportation costs and risks are for the Customer. Index Elektro BV will always determine the means of transport. Acceptance of products without note(s) on bill of lading or receipt is proof that products have been received with packing in good order.

**4.4** Index Elektro BV has the right to delay delivery if the Customer has to fulfill payment commitments for previous orders.

**4.5** Each partial delivery of a product or service can be billed. Payment has to take place according to chapter 7 of these Terms and Conditions.

**4.6** In case of the return of a properly delivered product Index Elektro BV will determine the value of product(s) which it will take back. In case of crediting Index

Elektro BV will always deduce at least €20,00 for handling. Returns for the purpose of repair have to be properly franked by the Customer.

## 5 – Complaints

**5.1** Complaints have to be submitted to Index Elektro BV no more than fourteen days after delivery, otherwise acceptance by the Customer is assumed.

**5.2** Complaints regarding billing have to be submitted to Index Elektro BV no more than fourteen days after the billing date. It does not give the Customer the right to delay payment.

**5.3** Unless other proof is submitted, information from the administration of Index Elektro BV is decisive.

**5.4** Customer cannot file complaints with Index Elektro BV after Customer has started use of or has resold (part of) the products and/or services delivered by Index Elektro BV.

## 6 – Warranty and Liability

**6.1** In case of defects of products delivered to Customer by Index Elektro BV liability will be limited to the repair or (partial) replacement of products which show defects during normal use within six months of billing date, but only if these can be attributed to fabrication errors or the use of improper materials. Liability will never exceed the value of the defective part, under exclusion of (de-)installation costs and delivery and travel costs, and also will never exceed the liability of our supplier towards us.

**6.2** Liability is only applicable if the Customer can prove that the defect occurred during the warranty period and is partially or wholly the result of improper materials or improper construction or handling. Honoring of warranty obligations will be the only compensation possible. Any other liability for direct or indirect costs or interests is expressly excluded. (Parts of) products which are by nature or company circumstances subject to premature wear are not subject to warranty obligations. This also applies to damage which is caused by negligence, inexperienced use, excessive load, incorrect lubrication, deficient building and foundation, and chemical, electrochemical or electrical influences.

**6.3** Warranty will be void in case of operations, modifications or repairs without prior consent of Index Elektro BV.

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Liability of Index Elektro BV for repair or replacement of products located outside The Netherlands is limited to the costs which would be applicable if the products were in The Netherlands.

Parts replaced by Index Elektro during repairs automatically become property of Index Elektro BV.

## 7 – Payment

**7.1** Customer must make payment no later than thirty days after the invoice date, unless agreed otherwise. If payment is not made in the payment period, the Customer shall be in default by operation of law and Index Elektro BV shall impose a late-payment interest fee of 1.5% per month (one point five percent), calculated over the period the Customer is in default, starting thirty days after invoice date, all of this without any further notice of default or court intervention being required. If, after notice of default, the Customer remains in default of its payment obligation, the claim may be put out for collection, in which case the Customer shall also be required to make full payment for all the (extra-) judicial and collection costs incurred by Index Elektro BV, being fifteen percent of the claim with a minimum of €250, without prejudice to Index Elektro BV's other rights. If payment is not made in any relevant payment period, Index Elektro BV is entitled to suspend its obligations pursuant to the contract and any other current contracts until full payment has been made, without prejudice to Index Elektro BV's right to damages and without any obligation to compensate the Customer for any loss.

**7.2** All payments shall be made to Index Elektro BV.

## 8 – Retention of title

**8.1** Index Elektro BV shall retain ownership of all the goods delivered until the receipt of all payments arising from the business relationship. The Customer shall not be entitled to encumber the goods which are subject to Index Elektro BV's retention of title, or to transfer title to these goods to any third party. If the customer acts in breach of the contract, Index Elektro BV shall be entitled to take back the goods delivered subject to title retention, and, without further notice of default of the other party or court intervention, to terminate the relevant contract, with immediate effect and without being obliged to pay the breaching party any kind of compensation. This shall not prejudice Index Elektro BV in exercising its other statutory rights,

such as the right to compensation and its right to receive payment for goods already supplied and work or services already provided.

**8.2** If Index Elektro BV has any products or other properties owned by the Customer in its possession, Index Elektro BV has the right to retain these properties until all invoices have been paid by the Customer, regardless if these payments are for aforementioned contract or other contracts, unless the Customer has provided sufficient financial insurances.

## 9 – Quality

**9.1** Defects in a part of the delivery do not give the Customer the right to reject the whole delivery.

**9.2** Index Elektro BV shall provide subsequent performance for defective goods by, at its sole discretion, either eliminating the defect or delivering goods free of defects.

**9.3** Regarding the custody, use and processing of products entrusted to Index Elektro by the Customer, Index Elektro will use the same care as used for its own products. However the Customer bears the risk for these products, and will decide for itself if it wants to insure them at its own cost.

## 10 – Liability and safeguard

**10.1** Except for provisions of mandatory law for product liability, as well as with observance of law of public order and good faith Index Elektro BV is not liable for any compensation for damage, of any kind, directly or indirectly, including loss of profits, to movable and immovable property, or to persons, both at principal and third parties.

**10.2** Index Elektro is not liable for damages and is not obliged to repair any defects that are related to natural wear, injudicious use, improper treatment and/or excessive load or use for a goal other than that the product (according to objective standards) should be used for.

**10.3** The Customer shall indemnify Index Elektro BV against all claims from third parties within the context of the work carried out or to be carried out.

**10.4** Liability of Index Elektro BV will be judged partly on the basis of the product-company damage insurance, as well as product liability. If damage is caused by Index Elektro to the Customer (company

damage) then liability will not exceed the netto order value of the delivered products.

## 11 – Force Majeure

**11.1** In the case of an event of force majeure, that is to say, a breach the cause of which does not lie with one of the parties, for which it is not at fault and for which it is not accountable by statute or pursuant to generally accepted standards, including the unavailability of ordered goods, and the event causes a delay in the execution of the contract of more than one week, then either party may terminate the contract, without being obliged to pay the other party any kind of compensation.

**11.2** Force Majeure here includes: any event - even if that event was foreseeable at the time the contract was awarded - which hinders or prohibits the delivery or the construction of the goods and/or services, or has such an influence on the delivery or the construction of the goods and/or services that compliance by Index Elektro BV is so costly or economically objectionable that the completion of the contract on the agreed terms cannot be reasonably expected from Index Elektro BV.

## 12 – Applicable statutory requirements

**12.1** Products will comply with Dutch law regarding operation, transport and safety, as valid on the day the contract comes into force.

## 13 – Installation, repair and maintenance

**13.1** The Customer will at its own cost take care that:

- Index Elektro BV can start and complete its activities;
- Access roads to the working location are suitable for the necessary transport;
- All necessary safety- and precautionary measures are taken and are maintained; so that installation, repair and maintenance activities are conform applicable law and regulations. Damage and costs resulting from not or not timely conforming to this article will be borne by the Customer.

## 14 - Dissolution

**14.1** In case of (partial) dissolution of the contract by the Customer, the Customer must at least pay for the services which have been carried out up to the point of termination, thereby retaining the right of Index Elektro BV to compensation for profit loss and other damages resulting from the dissolution of the contract.

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## **15 – Assignment**

**15.1** The Customer shall not be entitled to assign any of its rights and duties in conjunction with deliveries either in part or in full without obtaining prior written approval by Index Elektro BV.

**15.2** If the company of the Customer is - for whatever reason, in whichever manner and in whatever form - is merged with or continued in another company, then obligations of the Customer towards Index Elektro BV will be the joint liability of the original and successive company.

## **16 - Permits**

**16.1** In case permission is required for activities resulting from the contract from any instance such as the Monuments Act, local government, owner, etc, then the Customer is responsible for obtaining that permission. Index Elektro will not take responsibility for this, unless otherwise agreed in writing.

## **17 – Suspension or dissolution of the contract**

17.1 A contract between Index Elektro BV and the Customer may be suspended or dissolved immediately - without notice of default - in the following cases:

- if after conclusion of the contract, Index Elektro BV has come to know about circumstances that give Index Elektro BV good reason to fear that the Customer will not fulfil its obligations;

- if the Customer does not, or does not properly or in good time fulfil any obligation under the contract concluded between the parties.

In the aforementioned cases, Index Elektro BV shall be entitled to suspend further performance of the contract, or to dissolve the contract, as well as reclaim possession of products which have been delivered to the Customer but have not been paid for, all this without prejudice to the Customer's right to claim damages, unabated other rights.

## **18 – Applicable law**

**18.1** All legal relationships between Index Elektro and the Customer shall be subject to Dutch law.

## **19 – Arbitration**

All disputes arising out of or in connection with these General Terms and Conditions of Delivery and Payment or a contract or agreement shall, except for the right of parties to ask the preliminary relief judge for summary proceedings, be subject to rulings of the Court of Rotterdam.