

## **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**

### **1. Applicability**

- 1.1. These General Terms and Conditions of Sale and Delivery ("**General Terms and Conditions**") apply to all offers made and agreements ("**Agreement(s)**") entered into by Van der Valk Solar Systems B.V., having its registered office in Monster, Municipality of Westland, the Netherlands, and registered with the Chamber of Commerce under number 27355116, or its affiliated company as designated in the Agreement ("**Van der Valk**"), in which Van der Valk undertakes to supply products to a client ("**Client**").
- 1.2. The applicability of the Client's general terms and conditions or any other general terms and conditions is expressly excluded.
- 1.3. Deviation from the present General Terms and Conditions shall only be valid if expressly agreed to in writing by Van der Valk.
- 1.4. In the event of any conflict between the contents of an Agreement entered into between the Client and Van der Valk on the one hand and these General Terms and Conditions on the other, the provisions contained in the Agreement shall apply.
- 1.5. Where these General Terms and Conditions refer to the term "in writing", it shall mean by document signed by the parties, by letter, fax or e-mail, or in any other manner agreed by the parties.
- 1.6. If these General Terms and Conditions are also drawn up in a language other than Dutch, the Dutch text shall in case of any conflict always prevail.

### **2. Offers and conclusion of an Agreement**

- 2.1. All offers by Van der Valk are entirely without engagement or obligation, unless they contain an acceptance period.
- 2.2. The offer is based on the information, drawings, etc. provided by the Client to Van der Valk at the time thereof.
- 2.3. An Agreement is concluded when (i) the Client has accepted an offer from Van der Valk in writing within the acceptance period included in that offer, (ii) Van der Valk has confirmed a purchase order from the Client, or (iii) Van der Valk, at the request of the Client, has commenced performance of the Agreement.
- 2.4. An offer or a commitment made by a representative of Van der Valk shall only become binding when confirmed by Van der Valk in writing.
- 2.5. If it is agreed that payment will be made by means of a letter of credit, the Agreement shall only come into effect when Van der Valk has accepted the relevant irrevocable (confirmed) letter of credit in writing in accordance with the UCP 600 rules. The letter of credit will be opened by a bank pre-approved by Van der Valk.

### **3. Prices**

- 3.1. Unless otherwise agreed in writing, prices shall be quoted in euros, shall be exclusive of VAT and shall be based on the prices mentioned in the delivery condition specified in Article 6.8.
- 3.2. Any price stated by Van der Valk is based on monetary policy, labour costs, the purchase price, excise duties, taxes and other levies, subsidies and the like as they were at the time that the relevant Agreement was concluded. If following the conclusion of the Agreement, but before the relevant product(s) has/have been delivered, one or more of these cost price components increases, Van der Valk shall be entitled to pass on a proportional price increase to the Client.

### **4. Intellectual property rights**

- 4.1. Van der Valk shall be entitled to all intellectual property rights vested in, relating to or arising from the information provided under the Agreement between Van der Valk and the Client, including but not limited to designs, drawings, models, programs, etc. (hereinafter referred to as: "**Information**") and shall retain such rights at all times, irrespective of whether Van der Valk has charged the Client any costs for the development thereof. If and insofar as required, the Client hereby now already for then transfers to Van der Valk all intellectual property rights vested in, relating to or arising from the aforementioned Information.

- 4.2. The Information may not be reproduced or made public without the prior written consent of Van der Valk.  
The Client must return the Information to Van der Valk on Van der Valk's first request and within the term set by Van der Valk.
- 4.3. Van der Valk is the proprietor of all intellectual property rights that are vested in, relate to or arise from the products supplied under the Agreement between Van der Valk and the Client. The Client shall not modify or develop any delivered product in whole or in part, apply any trademark to it or use the relevant trademark in any other way or register it under its own name.
- 4.4. The Client acknowledges the rights of Van der Valk referred to in this Article and shall refrain from any form of infringement of these rights, under pain of forfeiture of an immediately due and payable penalty of € 25,000 for each infringement and of € 100 for each day that the infringement continues, without prejudice to Van der Valk's right to claim full damages and/or performance.

## **5. Advice, designs and materials**

- 5.1. The Client cannot derive any rights from any advice or information provided by Van der Valk that is not directly related to the Agreement.
- 5.2. The Client shall be responsible for the accuracy and completeness of all drawings, calculations and designs made by or on behalf of the Client, the functional usability of all materials prescribed by or on behalf of the Client, as well as the accuracy and completeness of all technical and other information provided by or on behalf of the Client.
- 5.3. The Client shall indemnify Van der Valk against any claims by third parties in respect of the use of the drawings, calculations, designs, materials and (technical) information mentioned in Article 5.2.
- 5.4. The Client must timely check whether the materials specifications provided by or on behalf of Van der Valk are satisfactory in view of the intended use of the products.
- 5.5. The Client shall be entitled to check the material that Van der Valk wishes to use before it is processed, or have it checked, at its own expense. All expenses incurred by Van der Valk in this respect shall be payable by the Client.

## **6. Delivery**

- 6.1. The delivery period set by Van der Valk shall never be regarded as a deadline. Van der Valk shall not be in default in respect of such a delivery period until the Client has given Van der Valk written notice of default, whereby it grants Van der Valk a reasonable period within which yet to effect delivery, and Van der Valk still fails to do so. If and as soon as Van der Valk expects that the delivery period will be exceeded, Van der Valk shall inform the Client thereof without unreasonable delay.
- 6.2. In determining the term of delivery, Van der Valk assumes that the engagement can be carried out under the circumstances as they are known to Van der Valk at that time.
- 6.3. The delivery period does not commence until the Agreement has been concluded in accordance with the provisions of Articles 2.3 and 2.5 of these General Conditions, the Parties have reached consensus on all business and technical details, all necessary data, final and approved drawings etc. are in Van der Valk's possession, any agreed advances, payments or partial payments have been received, any applicable security for payment has been accepted and the necessary conditions for carrying out the engagement have been fulfilled.
- 6.4.
  - a. If any other circumstances occur than those known to Van der Valk when the delivery period was set, Van der Valk shall be entitled to extend the delivery period by the time required to carry out the engagement under those other circumstances.
  - b. If there is additional work, the delivery period shall be extended by the time required for the delivery of the materials and parts required for the additional work and for performing the additional work.
  - c. If Van der Valk suspends its obligations under the Agreement, the delivery period shall be extended for the duration of the period during which the obligations have been suspended.
- 6.5. If the delivery period is exceeded, the Client shall not be entitled to dissolve the Agreement on that ground, unless the delivery period is exceeded by more than eight weeks. Van der Valk shall not be liable for any compensation in this respect.

- 6.6. Van der Valk reserves the right to make a delivery in parts. Each partial delivery shall be regarded as a separate Agreement. Van der Valk shall be entitled to demand payment for each partial delivery before proceeding with further delivery.
- 6.7. Any failure by the Client to meet its payment obligation or to meet that obligation in time shall have the effect that Van der Valk's obligation to deliver may be suspended.
- 6.8. Unless otherwise agreed in writing, delivery will be 'Free Carrier', Monster, the Netherlands (FCA, Incoterms 2020).

## **7. Force majeure**

- 7.1. Van der Valk shall be entitled to suspend fulfilment of its obligations under an Agreement if circumstances beyond Van der Valk's control, which could not have been foreseen at the time the Agreement was concluded, temporarily prevent fulfilment of those obligations (force majeure).
- 7.2. Circumstances as referred to in Article 7.1 include, but are not limited to, the circumstance that Van der Valk's suppliers and/or subcontractors fail to meet their obligations or fail to do so on time, weather conditions, earthquakes, fire, theft or loss of tools, destruction of materials to be processed, roadblocks, strikes or work stoppages, and import and trade restrictions.
- 7.3. In the event of circumstances as referred to in Article 7.1, the Client shall not be entitled to suspend its obligation to pay the consideration insofar as it relates to products that have already been delivered by Van der Valk.
- 7.4. The Client shall be entitled to dissolve the Agreement if the suspension referred to in Article 7.1 has lasted for more than six months, without the Client being entitled to claim any compensation.

## **8. Liability**

- 8.1. Van der Valk shall be liable for damage which the Client suffers or will suffer and which is the direct and exclusive consequence of a failure attributable to Van der Valk, subject to the provisions of the other paragraphs of this Article.
- 8.2. The following damages shall not be eligible for compensation:
  - a. indirect or consequential damage incurred by the Client or third parties, including, for instance, reputational damage, stagnation damage and loss of profit. If so desired, the Client shall be obliged to insure itself against such damage;
  - b. damage incurred by the Client or third parties as a result of unusual chemical effects on the equipment, including but not limited to cleaning agents, herbicides, fertilisers, etc;
  - c. damage incurred by the Client or third parties as a result of the provision of incorrect or incomplete data or information by the Client to Van der Valk, or otherwise resulting from an act or omission by the Client;
  - d. damage incurred by the Client or third parties resulting from any incorrect or incomplete compliance with the safety rules and instructions of Van der Valk and, where applicable, any failure to follow specific advice given by Van der Valk.
- 8.3. Van der Valk shall not be liable for any damage to material supplied by or on behalf of the Client as a result of incorrect processing by Van der Valk. At the request of the Client, Van der Valk shall repeat the processing, with new material supplied by the Client at the Client's expense.
- 8.4. Van der Valk's liability shall under all circumstances, including but not limited to tort or product liability, be limited to the amount covered under Van der Valk's liability insurance for the relevant claim, increased by any excess to be borne by Van der Valk under the relevant insurance policy.
- 8.5. If, for any reason whatsoever, the liability insurer does not pay out, Van der Valk's liability shall be limited to the amount charged by Van der Valk (excluding VAT) in respect of the performance carried out by Van der Valk pursuant to the Agreement to which the damage-causing event relates or to which it is connected. If the Agreement is a continuing performance agreement with a term of more than one year, the aforementioned amount shall be set at one time the amount of the fee (exclusive of VAT) charged to the Client in the twelve months prior to the occurrence of the damage with respect to the performance by Van der Valk pursuant to the Agreement to which the damage-causing event relates or to which it is connected. A connected series of attributable shortcomings shall be deemed to be one single attributable shortcoming.
- 8.6. The Client shall indemnify Van der Valk against all third-party claims based on tort or product liability as a result of a defect in a product delivered by the Client to a third party that (partly) consisted of products and/or materials supplied by Van der Valk.

8.7. The exclusions or limitations of Van der Valk's liability resulting from the above, as well as the obligation of the Client to indemnify Van der Valk resulting from the previous paragraph, shall not apply insofar as the damage is the result of intent or deliberate recklessness on the part of Van der Valk or its managerial employees.

## **9. Guarantee**

- 9.1. Van der Valk gives a guarantee on the products it supplies for a period of ten (10) years after delivery (hereinafter referred to as: "**Guarantee Period**"), for construction defects (hereinafter referred to as: "**Guarantee**"). If and insofar as applicable, the Guarantee Period is - in deviation from the above provisions - five (5) years for moving parts.
- 9.2. If a product is found to be defective during the Guarantee Period, the Client must return the relevant product to Van der Valk Delivery Duties Paid, Monster, the Netherlands (DDP, Incoterms 2020). Van der Valk shall then have the option to (i) repair the object, (ii) replace the object or (iii) credit the Client for a proportionate part of the invoice.
- 9.3. The percentage of the costs of replacement or repair to be borne by Van der Valk, or the percentage of the invoice for which Van der Valk will credit the Client, will be reduced linearly during the Guarantee Period from 100% in the first year to 0% after the tenth year in the case of static parts, and after the fifth year in the case of moving parts.
- 9.4. The Client must in all cases give Van der Valk the opportunity to remedy any shortcomings, unless remedy is impossible.
- 9.5. The Client shall only be entitled to claim the Guarantee if it has fulfilled all its obligations towards Van der Valk.
- 9.6. The Guarantee on a product lapses if the (assembly) system of which that product forms part also incorporates products of third parties, unless Van der Valk and the Client have agreed otherwise in writing.
- 9.7. a. No Guarantee will be given when the defects are the result of:
- the fact that the Client has provided Van der Valk with incorrect information, including, but not limited to, information relating to weather conditions, stability of the base, external influences, etc;
  - incorrect or incomplete compliance with Van der Valk's safety rules and instructions and, where applicable, failure to follow specific advice given by Van der Valk;
  - unusual chemical effects on the equipment, including but not limited to cleaning agents, herbicides, fertilisers, etc.;
  - the use of damaged or defective parts in the final assembly;
  - normal wear and tear;
  - improper use;
  - lack of proper maintenance;
  - fitting, assembly, adjustments or repairs carried out by the Client or third parties.
- b. Van der Valk gives no Guarantee on delivered products that were not in a new condition at the time of delivery, or on objects whose use was prescribed by the Client or which were made available by or on behalf of the Client.
- 9.8. If Van der Valk repairs products, no new guarantee period will start after the repair.

## **10. Complaints**

- 10.1. The Client may only claim defects in the products or services if Van der Valk has been notified thereof in writing within fourteen days after the defect has been discovered or should reasonably have been discovered.
- 10.2. The Client shall be obliged to check the products delivered by Van der Valk for completeness immediately upon delivery. Notwithstanding the provisions of paragraph 1, the Client may only invoke the incompleteness of the products delivered if Van der Valk has been notified thereof in writing within 48 hours after the products have been delivered.

## **11. Failure to take delivery**

- 11.1. If the Client has not taken delivery of any object after the expiry of the delivery period, this object will remain at the Client's disposal. All objects that have not been taken delivery of by the Client will be stored at the expense (including handling and insurance costs) and risk of the Client. Van der Valk shall at all times be entitled to invoke Article 6:90 of the Dutch Civil Code.

## **12. Payment**

- 12.1. Van der Valk shall at all times be entitled to demand full or partial payment in advance. As regards all other sales, payment by the Client must have taken place within 14 days of the relevant invoice date, unless otherwise agreed in writing.
- 12.2. Without prejudice to the payment conditions set out, the Client shall be obliged to provide security for payment at Van der Valk's first request, at the Client's choice at the time of or after entering into the Agreement and before its execution. If the Client fails to provide such security for payment within the stipulated period, it shall immediately be in default. Van der Valk shall in such case be entitled to suspend or nullify the Agreement and recover any damages suffered from the Client.
- 12.3. The Client's right to set off any outstanding claims against Van der Valk is hereby excluded.
- 12.4. The full claim for payment shall immediately be due and payable in the following cases:
- if any payment period has been exceeded;
  - if the Client has been declared bankrupt, or a petition for its bankruptcy has been filed, or if the Client has filed a petition to be granted a suspension of payments;
  - if assets or receivables of the Client are seized;
  - if the Client (if it is a legal entity) is dissolved or liquidated;
  - if the Client (if he is a natural person) files a petition for debt restructuring (under the Debt Restructuring for Natural Persons Act), is placed under guardianship or dies.
- 12.5. If payment has not been made by the expiry of the stipulated deadline for payment, the Client shall, without any further notice of default or judicial intervention being required, be deemed to be in default, and the Client shall immediately owe Van der Valk interest. Such interest shall be 12% on an annual basis, or equal to the statutory interest rate if higher. In calculating the amount of the interest, parts of months shall be counted as full months.
- 12.6. If payment has not been made on expiry of the stipulated deadline for payment, the Client shall immediately be liable to reimburse Van der Valk for all extrajudicial costs, with a minimum of € 75. These costs shall be calculated on the basis of the table below:
- |                                  |
|----------------------------------|
| 15% of the first € 3,000;        |
| 10% of the excess up to € 6,000; |
| 8% of the excess up to € 15,000; |
| 5% of the excess up to € 60,000; |
| 3% of the excess above € 60,000. |
- If the actual extrajudicial costs incurred exceed the costs based on this formula, the Client shall be obliged to reimburse the actual costs.
- 12.7. If legal proceedings are decided in favour of Van der Valk, all legal costs incurred by Van der Valk shall be for the account of the Client.

## **13. Retention of ownership and pledge**

- 13.1. Van der Valk shall remain the owner of the delivered products for as long as:
- the Client has not paid the consideration for the products delivered or to be delivered under the Agreement;
  - the Client has not paid the consideration for the work performed or to be performed on the basis of the Agreement or similar agreements;
  - the Client has not satisfied any claim arising from non-compliance with the provisions of the Agreement or similar agreements, such as damages, penalties, interest and expenses.
- 13.2. As long as products are subject to retention of ownership, the Client shall not be entitled to alienate or encumber such products in any manner beyond the Client's normal business activities.
- 13.3. Van der Valk shall, if it has claimed retention of ownership, be entitled to collect the delivered products. The Client shall be obliged to grant Van der Valk access to the location where such products are located.
- 13.4. In the event that Van der Valk cannot claim retention of ownership because the delivered products themselves no longer exist as such because they have become the subject of confusion, deformation or accession, the Client shall be held to pledge the newly formed objects to Van der Valk upon Van der Valk's first request.

#### **14. Suspension and termination**

- 14.1. If the Client fails to fulfil its obligations arising from an Agreement it has entered into or fails to do so correctly or on time, or if there is good reason to suspect this, or if a request for a suspension of payments or bankruptcy of the Client has been submitted, or if the Client liquidates its business, Van der Valk shall be entitled, without any notice of default or judicial intervention being required, to suspend its obligations arising from the Agreement in question or to dissolve that Agreement, and it shall not be obliged to pay any compensation.
- 14.2. Any claim of Van der Valk in respect of a part of the Agreement that has already been executed or in respect of any damage suffered as a result of the suspension or dissolution, including loss of profit, shall be immediately due and payable.

#### **15. Applicable law and competent court**

- 15.1. These General Terms and Conditions and any Agreements entered into by Van der Valk shall exclusively be governed by Dutch law.
- 15.2. The Dutch court within whose district Van der Valk has its registered office shall have exclusive jurisdiction in all disputes, unless Van der Valk elects to submit the dispute to a competent court elsewhere.
- 15.3. The provisions of Article 15.2 shall not prejudice Van der Valk's right to reach a settlement by means of arbitration by the International Chamber of Commerce, under the Arbitration Rules of the International Chamber of Commerce, by one or more arbitrators. The place of arbitration will be in Amsterdam, the Netherlands. The arbitration proceedings will be conducted in the Dutch or English language.

#### **16. Amendments**

- 16.1. Van der Valk shall be entitled to amend these General Terms and Conditions at any time.
- 16.2. Amendments shall only become binding on the Client if (i) the amended General Terms and Conditions have been filed with a Chamber of Commerce or with the registry of a district court, and (ii) Van der Valk has notified the Client of the amendments to the General Terms and Conditions and fourteen (14) days have passed after the date of such notification without the Client having given written notice to Van der Valk not to agree to the amendments.