

# GENERAL CONDITIONS OF BRAKEL ALUMINIUM B.V.

## 1. APPLICABILITY

- 1.1 These General Conditions shall be applicable to all our offers, agreements and statements and all obligations arising therefrom.
- 1.2 Deviations from these General Conditions and/or any offer or agreement shall only be made in writing by those persons authorised to do so and shall as then only be applicable to the specific agreement to which the deviations relate. Contrary to the provisions of Article 6:225 Section 2 of the Dutch Civil Code and – if applicable – Article 19 Section 2 of the United Nations Convention on Contracts for the International Sale of Goods (CISG; the 'Vienna Convention') we are not bound to deviations from our offer contained in the Contracting Party's acceptance of that offer.
- 1.3 It is expressly agreed that the general or whichever other conditions of our Contracting Party or any third party shall under no circumstances be applicable to the individual agreement with us, save if agreed otherwise in writing.

## 2. OFFERS, ORDERS

- 2.1 Our offers shall be considered to constitute a whole and shall be valid during 60 days or so much longer or shorter as stated therein, but shall at all times be without engagement. Offers may be revoked within three (3) working days after receipt of their acceptance.
- 2.2 All information, such as to dimensions, weights, capacities and quantities, stated in our offers, letters, catalogues, drawings etc., shall be as precise as possible and shall only be binding in so far as this is stated expressly in the document in question. We can however not warrant the absence of deviations from said information and shall not be held to provide further details.
- 2.3 Offers shall be based on the particulars provided by our Contracting Party. Said Contracting Party is liable for possible extra costs, price increases, delivery delays and other consequences of changes, deviations and/or errors in these particulars.
- 2.4 In case of an order without a prior offer from us, an agreement shall only be concluded if the same is confirmed in writing by a person in our organisation authorised to do so or actually executed within 14 days after receipt of the order.

## 3. PRICES

- 3.1 All offers shall be subject to delivery "ex works" (EXW Uden – Incoterms 2010), unless agreed otherwise. These offers shall be exclusive of packing and shipping costs, cross-border transport and customs-related costs (if applicable), costs of loading and discharging, VAT, costs of assembly, testing and start-up and bank charges.
- 3.2 Our prices shall be based on the price-determining factors applicable at the time of the offer, including inter alia the total amount of wages calculated according to our regular working hours. We shall have the right to increase the agreed prices and contracted sums on the basis of a subsequent increase of said price-determining factors, even if the latter increase was foreseeable at the time of the offer.
- 3.3 We shall be authorised to invoice the amount of the increase as soon as it is known to us.

## 4. SCOPE OF ACTIVITIES

The agreement shall cover the delivery of the entire product as described in the offer and/or the order confirmation. As the occasion arises, the agreement shall furthermore be executed on the basis of the drawing(s) approved by our Contracting Party, including the dimensions stated thereon.

## 5. DELIVERY AND RISK, OBLIGATION TO PURCHASE

- 5.1 Delivery period shall mean the period stated in the agreement within which the goods have to be delivered. Stated delivery periods shall only be indicative, shall therefore never be considered to be fatal and are furthermore based on the circumstances known to us at the time of conclusion of the agreement and, in so far as we are dependent on third parties, the information said third parties have provided us with. In case the stated periods are exceeded, we shall only be in default after a written notification of default by our Contracting Party and after the latter has granted us a reasonable period yet to proceed with the delivery of the goods in question.
- 5.2 The delivery period shall commence after the agreement has been concluded and all information and/or materials to be made available by our Contracting Party and required for the production of the goods to be delivered have been made available to us.
- 5.3 The products in question shall be deemed to have been delivered and put into the possession or under the control of our Contracting Party and the risk with respect to these products is transferred to our Contracting Party as soon as these products have been loaded for transport, whichever party to the agreement is responsible for said transport.
- 5.4 Where we are responsible for transportation of the products, our Contracting Party shall enable us to discharge the products in question on (the delivery) site within 2 hours, failing which we may charge for the delay. Our Contracting Party shall be responsible for discharge of the products in undamaged condition and shall therefore make available appropriate tools to enable discharge without damage of the products and the pallets they are stacked on.
- 5.5 If the requested delivery period is exceeded by more than four weeks because our Contracting Party fails to or is not capable to take delivery of the products in question, said products shall be invoiced automatically. Our Contracting Party is liable for any and all extra costs incurred and other damage sustained by us as a result of said exceeding. If

our Contracting Party refuses reception of the products in question within the aforementioned term of four weeks, we are entitled to store those products, sell them to a third party / third parties or otherwise dispose of them, all at the expense of our Contracting Party.

- 5.6 Our Contracting Party is obliged to give all assistance required for the performance of the agreement. This assistance will be considered to have been refused:
  - if, where our Contracting Party is responsible for transport, the relevant products/materials have not been collected by or on behalf of our Contracting Party on the agreed date;
  - if, where we are responsible for transport, the relevant products/materials have been offered to our Contracting Party for delivery, and delivery has proven to be impossible or our Contracting Party has refused to take delivery
  - if our Contracting Party refuses to allow us access to the work and/or prevents or obstructs our performance of the agreement in any other way.
- 5.7 In the instances referred to in paragraph 6 of this Article our Contracting Party will be immediately in default, without notice of default being required. The day on which the refusal occurred will be regarded as the delivery date of the products/materials concerned. In that event, everything that our Contracting Party owes us under the relevant agreement will be immediately and fully due and payable. Our Contracting Party will be liable for any extra costs we incur and for any other loss we suffer in this event.

## 6. DELIVERY ON CALL-OFF BASIS

- 6.1 In the event of delivery on call-off basis, we will deliver the relevant products/materials within 30 business days after the day on which they were called. Where a notice period has been agreed and this period is not observed, said call-off period will be extended with ten business days.
- 6.2 Our Contracting Party is obliged to call-off the products/materials. If it fails to do so within four weeks, we will invoice the products in question to our Contracting Party and may store or procure to store said products/materials for the account and risk of our Contracting Party, or sell or procure to sell them for the account and risk of our Contracting Party, without prejudice to any other rights we have in this respect. If the products/materials are stored in accordance with the preceding sentence, they will be considered to have been delivered. Our Contracting Party will be liable for any extra costs and other loss we incur in this connection.
- 6.3 In the event of delivery on call-off basis, transfer of title will take place subject to the suspensive condition of payment by our Contracting Party as well.

## 7. INSURANCE CLAUSE

We shall take out credit insurance with a maximum coverage. Irrespective of offers made, we shall never be held to accept orders that exceed said maximum coverage.

## 8. PAYMENT, SET-OFF

- 8.1 Payment periods shall at all times be 30 days after the invoice date at the most, or so much longer or shorter as is stated in our offers and/or order confirmations, without reduction or suspension. Set-off by our Contracting Party shall not be allowed unless we have unconditionally acknowledged the counterclaim in writing. In case of a delivery in parts we shall have the right to invoice each part separately.
- 8.2 Payment shall either be made at our office, on a bank account in The Netherlands to be specified by us or in any other way indicated by us.
- 8.3 If no payment has been received from or on behalf of our Contracting Party within the agreed payment period, our Contracting Party shall immediately be in default and all our claims on our Contracting Party shall immediately be due and payable. Without notice of default we shall then have the right to suspend the execution of the contract in question and to charge default interest of 1.5% per month or the statutory interest applicable in The Netherlands on the outstanding invoice amount as per payment due date, whichever is the higher and without prejudice to any other rights accruing to us in that respect. Said default interest shall be calculated on a monthly basis, part of a month being reckoned as a whole month.
- 8.4 In case of default in the sense of Section 8.3, all extra-judicial costs incurred by us for the purposes of accomplishing the performance of the obligations of our Contracting Party shall be for the account of our Contracting Party. These costs shall be calculated according to the collection rate of 15% as advised by the Dutch Bar Association and be increased with the interest as mentioned in Section 8.3, with a minimum of € 250,-, without prejudice to our right to claim our actual damage if higher.
- 8.5 If our Contracting Party is fully or partly ruled against in judicial or arbitral proceedings in this respect, it shall be under an obligation to not only pay the costs as determined by the court or arbitrator(s) in question, but also the costs of the proceedings and legal representation actually made, in so far as these costs exceed the costs as determined by said court or arbitrator(s).
- 8.6 We shall at all times be entitled to set-off our claims on our Contracting Party and its affiliated enterprises against any amount due to them, even if our Contracting Party's regarding counterclaim has been transferred to a third party.
- 8.7 Payments made shall first be applied to settle interest payable and (legal and other) costs, subsequently to settle any debt due and payable with respect to which no valid retention of title can be stipulated and finally to settle the invoices longest overdue, even if our Contracting Party

states that the payment in question relates to (an)other / later invoice(s).

- 8.8 We are entitled to require security in this respect. The security in question shall be such that all our Contracting Party for whatever reason owes us is duly covered. If our Contracting Party refuses to provide security to our satisfaction, we shall be entitled to suspend our obligations to them.

## 9. INSPECTION AND COMPLAINTS

- 9.1 The checking of the quantity of the delivered goods shall be the responsibility of our Contracting Party. If our Contracting Party does not lodge a complaint as soon as possible and at all times within 48 hours after receipt of the delivered goods, the quantities stated in the relevant consignment notes, packing slips, invoices and/or similar documents shall be deemed to be correct.
- 9.2 Our Contracting Party shall be held to inspect the delivered goods immediately on receipt. Our Contracting Party shall further be held to immediately on receipt of the goods forthwith state any visible defects in the goods on the consignment note, specified with a clear description of the complaint. Our Contracting Party shall be held to lodge any other complaints with us within two working days after receipt of the goods in question or after the defects in the goods (if any) could reasonably have been discovered at the latest. Failing timely complaints, or if the goods have been processed in whole or in part, the goods shall be deemed to have been accepted, and our liability in that respect shall have lapsed, unless the defect in question can only be discovered by or during the processing of the goods, without prejudice to the obligations of our Contracting Party in that case to raise complaints in time.
- 9.3 Complaints regarding invoices shall be lodged with us in writing and within 8 days after they have been sent, failing which the information stated on the invoices in question shall be deemed to be definite.
- 9.4 Our Contracting Party shall render us all required assistance in our investigation as to the cause of the complaint in question, among other things by providing us with samples and/or pictures and, in so far as relevant, by enabling us to investigate the circumstances at the place where the goods in question are processed.
- 9.5 In case we accept the complaint in question, we shall have the right to at our discretion repair or redeliver the goods or terminate the contract with our Contracting Party wholly or in part, subject to reimbursement / a setoff of the purchase amount in question or part thereof, without our Contracting Party being entitled to compensation.
- 9.6 We will not accept complaints from our Contracting Party if it fails to take delivery of goods in the sense of Article 5, Section 5 of these General Conditions or as long as it has not fulfilled all its obligations due and payable to us.
- 9.7 Our Contracting Party shall be entitled to request inspection of the products/materials to be delivered by us on colour differences before assembly or transportation. If our Contracting Party fails to inspect the products/materials on colour differences before assembly or transportation, the relevant risk will be for our Contracting Party and it will have forfeited the right to complain about the differences in colour after delivery.

## 10. BANKRUPTCY, ETC.

If our Contracting Party fails to perform any of its obligations under any agreement with us in time, properly or at all, as well as in case of bankruptcy, suspension of payments or placement under legal restraint of the Contracting Party or the stoppage or liquidation of its enterprise, the Contracting Party shall be deemed to be in default by operation of the law, whereas we shall at our discretion have the right to cancel the agreement in whole or in part or to suspend (further) performance of the agreement and directly related other agreements and/or obligations, until fulfilment by our Contracting Party of its obligations has sufficiently been ensured, all without any notification of default or interference of the competent court being required and without our being held to pay any compensation, without prejudice to any of our further rights in respect thereof, like for instance our right to compensation, explicitly including consequential damage. In case of cancellation or suspension pursuant to this Clause, the purchase price in question shall become immediately due and payable, subject to deduction of the instalments that have already been paid and the costs (if any) we have saved as a result of the suspension, and we shall be authorised to store or to have stored the (raw) materials, parts and other goods we have reserved, processed and/or manufactured in view of fulfilment of the agreement, at the risk and account of our Contracting Party.

## 11. RETENTION OF OWNERSHIP

- 11.1 All goods we deliver remain our property until full and final payment of all our claims under the underlying agreement to deliver goods and perform appurtenant activities, as well as under claims for our Contracting Party's failure in the performance of such agreement has taken place, including interest and costs. The risk with respect to delivered goods shall pass to our Contracting Party at the moment of delivery.
- 11.2 Until full and final payment in the sense of Section 11.1 has taken place and/or a settlement has been reached, our Contracting Party shall not be authorised to pledge the goods or to transfer the property thereof to third parties. However, within the framework of the normal course of its business our Contracting Party shall be entitled to sell and deliver the goods to third parties in conformity with their intended use.
- 11.3 Until full payment has taken place and our Contracting

Party is in default, or if we have good reasons to fear that it will default, we shall be entitled to take back the goods in question immediately, without any prior notification of default. Our Contracting Party shall be held to grant us permission to access its buildings and premises for this purpose and to otherwise fully cooperate in this respect, on penalty of a fine amounting to 30% of the unpaid claims in question. The agreement may as then be deemed cancelled by us without interference of the competent court, notwithstanding our rights to claim compensation of costs, damage and interests.

- 11.4 Our Contracting Party shall be held to keep the goods referred to in this article sufficiently separated from other goods, and to insure them adequately, in any case against the risks of theft, damage and loss. Our Contracting Party shall furthermore be held to keep intact and/or have others keep intact the marks and/or signs placed on the goods. Our Contracting Party shall not be allowed to pledge any claims on its insurer under any insurance as referred to in this Section or transfer the ownership thereof to third parties, nor shall it be allowed to let these claims serve as securities for third parties in the broadest sense of the words used. Payments by insurers ensuing from damage and loss of the goods referred to in this article shall take the place of the goods involved.
- 11.5 In case we cannot invoke our retention of title because the delivered goods have been treated, processed, mixed or deformed by or on behalf of our Contracting Party, or if they have become property of a third party by accession, our Contracting Party shall be held to pledge to us the goods hence newly formed and/or the products that have been assembled with the delivered goods and/or the main product of which the delivered goods have become a constituent part.
- 11.6 Our Contracting Party shall be held to immediately notify in writing any third party or – in case of a (provisional) suspension of payments or bankruptcy – administrator and receiver respectively who may want to levy seizure on the goods covered by our retention of ownership, that we are the owner of those goods. Our Contracting Party shall provide us with a copy of the notification in question without delay. If our Contracting Party does not comply with the obligations set out in this Section, it shall without any interference of the competent court forfeit an immediately due and payable penalty of € 5.000,-- , or, if higher, the original invoice amount with respect to the goods in question, without prejudice to our right to claim full compensation.

## 12. GUARANTEE

- 12.1 On the equipment / products / materials delivered by us a guarantee of one year after the date of delivery or so much shorter or longer as stated in the agreement shall be applicable. During the stated guarantee periods we guarantee the absence of construction faults in said equipment / products and faults in the materials used therefor. Faulty equipment / products / materials in the sense of this Section must be sent back to us carriage paid. Subsequently, we will at our discretion either repair, improve or replace equipment / products / materials of which our Contracting Partner sufficiently proves that they have broken down as a result of such faults within the guarantee period, or credit our Contracting Party for a pro rata part of the invoice in question.
- 12.2 In so far as we use materials delivered by third parties in the products delivered to our Contracting Party, our guarantee shall under no circumstances have a wider scope than the guarantee issued by the third party in question.
- 12.3 Costs of replacement or repair under the guarantee shall be payable by us for either that part of the invoice amount that refers to the production costs of the equipment / product(s) / materials in question at most, or in so far as these costs are covered by a guarantee issued by a third party / our supplier.
- 12.4 Our Contracting Party shall not be entitled to make a claim under the guarantee until it has fulfilled all its obligations under the agreement which contains that guarantee. Suspension of the commencement date of the guarantee in this respect does not alter its expiry date.
- 12.5 Redelivery, replacement or repair under the guarantee does not extend or renew the guarantee period.
- 12.6 In so far as our activities in relation to the fulfilment of our obligations under the guarantee exceed the mere obligation to repair, improve or replace in the sense of Section 1 of this article, the involved costs are not covered by the guarantee, such costs including but not being limited to the costs of scaffolding and safety and other measures required for assembly/disassembly and the costs related to (new) filing applications for permits and exemptions, if any. Our Contracting Party is to place power, hoist, lift, and transport equipment, scaffolding, etc. at our disposal free of charge.
- 12.7 Unless otherwise agreed, the guarantee does not cover our travel and/or accommodation expenses and the transport costs in relation to the guarantee in question.
- 12.8 We shall not be held to fulfil the guarantee under the following circumstances:
- a. if we have indicated in a timely manner that we do not agree with the choice of materials and/or the method of operation required from us by our Contracting Party;
  - b. if our Contracting Party or third parties have carried out repairs on and/or made additions to the equipment / product(s) / materials in question, regardless of whether these repairs and/or additions have led to changes to said equipment / product(s) / materials;
  - c. if defects in the equipment / product(s) / materials are the result of weathering or unforeseen temporary or permanently harmful effects of the environment, normal wear and tear, inexpert / abnormal and/or negligent use, external influences after delivery, deformations in constructions by our Contracting Party or third parties, incorrectly executed construction, cleaning or other activities by our Contracting Party / third parties, the use by our Contracting Party / third parties of materials unfit for their purpose and/or failure of our Contracting Party, its personnel and/or third parties called in by it to carry out proper maintenance or maintenance at all;
  - d. if the claim under the guarantee concerns (a) small flaw(s), which does/do not impair the soundness of the equipment / product(s) / materials in question;

- e. if the product is not used in accordance with its intended use;
  - f. if the defect in question has not been reported to us in writing within 8 days after it has been discovered or could have been discovered at the latest;
  - g. if the defect(s) in question is/are due to circumstances which are not at our expense and risk.
- 12.9 With respect to materials, equipment etc. purchased from third parties, we shall not be held to a longer guarantee period or further liability than the manufacturer or supplier in question is willing to accept towards us with respect to said materials, equipment etc., notwithstanding the other provisions of this article.
- 12.10 If we replace parts in order to fulfil our guarantee obligations, the replaced parts shall become our property.
- 12.11 The fulfilment of our guarantee obligations and the lapse of the guarantee period shall exclude any claim for repair or compensation of damage, including any such claim with respect to defects that come to light afterwards.

## 13. LIABILITY

- 13.1 We are liable for our Contracting Party's damage in so far as the same is a direct and exclusive consequence of a shortcoming which can be imputed to us. Only the damage against which we are or should reasonably have been insured shall however qualify for compensation. If and in so far as no insurance payment should take place, any liability of Brakel Aluminium b.v. shall be limited to the invoice value of the goods delivered by us and paid for by our Contracting Party that have caused the damage, up to a maximum of € 25.000,-- . Any obligation, regardless against whom, ensuing from the applicability of self-insurance in this respect, shall be at the expense and risk of our Contracting Party.
- 13.2 Any further liability of Brakel Aluminium b.v. is excluded. We expressly do not accept liability for – and our Contracting Party shall indemnify us for – claims of third parties with respect to:
- a. damage resulting from the faultiness of constructions prescribed by or on behalf of our Contracting Party in which equipment / products / materials as delivered by us have been processed and/or damage of any nature whatsoever as a result of errors in designs and/or drawings prescribed by our Contracting Party and not originating from us, or in drawings, information or orders originating from our Contracting Party;
  - b. damage resulting from or in drawings, information or orders that originate from our Contracting Party;
  - c. loss due to drift snow, hail etc., wind with a force exceeding 14 meters/second, or strong atmospheric changes;
  - d. damage resulting from defective performance by third parties called in by our Contracting Party of their obligations towards our Contracting Party, including inter alia in relation to defective packing and defective transportation by such third parties;
  - e. consequential damage in this respect, including non-material damage, trading loss as a result of for instance stagnation and loss of profits or environmental damage;
- 13.3 Our Contracting Party shall indemnify us for all claims of third parties based on product liability resulting from defects in products delivered to such third parties which partly consist of equipment / products / materials as delivered by us.
- 13.4 Conditions limiting or excluding liability which can be invoked against us by our suppliers, can equally be invoked by us against our Contracting Party and other involved parties.
- 13.5 Any claim within the framework of this article, in so far as such claim has not been acknowledged by us, shall become extinguished by the lapse of twelve months after the inception of such claim, unless a mandatory statutory provision stipulates otherwise.

## 14. FORCE MAJEURE

- 14.1 Any failure on our part to perform any of our obligations under the agreement with our Contracting Party shall not be imputed to us and shall not be our risk in case of default of and/or failure in the performance of our suppliers, sub-contractors and/or carriers of their obligations under their agreement with us (like for instance supply delays or production problems), in case of delays at harbours and/or customs, as to clearance of the delivered goods or not, and/or in case of fire, blockades, strikes or lock-outs, riots or insurrections, war, measures of the government including prohibitions on export, import and/or transit, precipitation like hail, drift snow etc., wind with a force exceeding 20 meters/second, frost or other unworkable weather conditions and all other unworkable circumstances outside our control that wholly or partly prevent the performance of our obligations or that are of such nature that it can no longer be required from us to perform our obligations, regardless of whether said circumstances were foreseeable at the time of conclusion of the agreement. Any default of and/or failure in the performance of our suppliers, sub-contractors and/or carriers of their obligations under their agreement with us and circumstances as summed up in the preceding sentence shall qualify as force majeure and shall constitute a valid reason for us to suspend the performance of our obligations under the agreement in question for the duration of the situation of force majeure. As soon as a situation of force majeure has lasted three months or if it is clear that such situation will at least last three months, both parties to the agreement shall have the right to fully or partly terminate that agreement in writing, but only in so far as termination is justified by the situation of force majeure.
- 14.2 Our Contracting Party shall in case of a temporary or permanent impossibility of performance on our part not be entitled to suspend any of its obligations of any nature whatsoever towards us, nor shall it be entitled to any damages, even if we should benefit in any way from the force majeure situation in question.

## 15. INTELLECTUAL PROPERTY RIGHTS

- 15.1 With respect to the goods made available to it under any agreement between our Contracting Party and us, including all documents, descriptions, (technical) information, working methods, processes, drawings, schedules, models, calculations, designs and all software in that respect, we grant our Contracting Party a non-exclusive and non-transferable

right of use. The intellectual property rights with respect to the aforementioned goods will remain vested with us or the third party we have authorised to make these goods available to our Contracting Party, even if costs have been charged for them to the Contracting Party.

- 15.2 We warrant that rights of third parties shall not preclude that our Contracting Party will be able to use the goods in question in accordance with the provisions of its agreement with us. Unless otherwise agreed, our Contracting Party is not allowed to alter or copy the goods as specified in the first section of this article or to make them available to third parties.
- 15.3 The right of use in this respect shall apply for an indefinite period of time, but can be terminated by us without notice of default and with immediate effect if our Contracting Party fails to comply with any obligation under these general conditions or any agreement with us or otherwise acts unlawfully in that respect.
- 15.4 In case of breach of the provision of the second sentence of Section 2, our Contracting Party shall forfeit an immediately payable penalty to us of € 25.000,-- per breach, which shall not be open to judicial moderation or qualify for setoff. Said penalty can be claimed in addition to full compensation in accordance with the law, without prejudice to our other rights in this respect.
- 15.5 Our Contracting Party shall return the data made available to it as specified in Section 1 to us at our first request. In case of breach of this provision our Contracting Party shall forfeit an immediately payable penalty to us of € 1.000,-- per day that such breach continues, which penalty shall not be open to judicial moderation or qualify for setoff. Said penalty can be claimed in addition to full compensation in accordance with the law, without prejudice to our other rights in this respect.
- 15.6 Our Contracting Party shall indemnify us for claims of third parties for compensation based on infringement of intellectual property rights of those third parties by our use of drawings, data, materials or parts provided or prescribed to us by or through our Contracting Party.

## 16. SECRECY

Our Contracting Party shall be held to refrain from divulging to third parties any information explicitly qualified by us as classified and any information of which our Contracting Party should reasonably understand that it must be considered as classified, such information having come to its knowledge or in its possession within the framework of the conclusion and/or execution of any agreement with us. Our Contracting Party shall refrain from using said information for any other purpose than within the framework of its agreement(s) with us. For each breach of the obligation as set out in the preceding sentence, our Contracting Party shall forfeit an immediately payable penalty to us of € 25.000,-- , which shall not be open to judicial moderation or qualify for setoff. Said penalty can be claimed in addition to full compensation in accordance with the law, without prejudice to our other rights in this respect.

## 17. STRICT LIABILITY OF CONTRACTING PARTY

- 17.1 If we establish that the goods we have made available to our Contracting Party are used by any third party without our prior consent in writing, regardless of the nature of such use, our Contracting Party shall be deemed to have breached the provisions of Article 15 and/or 16 of these general conditions, unless to our judgment it satisfactorily demonstrates the contrary.
- 17.2 Our Contracting Party shall be held to impose its obligations under Articles 15 and 16 of these general conditions on its client or any third parties called in by its client similarly as we impose these obligations on our Contracting Party, in the absence of which it shall forfeit an immediately payable penalty to us of € 25.000,-- , which shall not be open to judicial moderation or qualify for setoff. Said penalty can be claimed in addition to full compensation in accordance with the law, without prejudice to our other rights in this respect.

## 18. TRANSFER OF RIGHTS AND OBLIGATIONS

We shall be authorised to transfer any rights and/or obligations under any of our agreements with our Contracting Party to any third party. Our Contracting Party shall not be authorised to do so without our prior consent in writing.

## 19. GOVERNING LAW, SETTLEMENT OF DISPUTES

- 19.1 All our offers, agreements and statements and all obligations arising therefrom shall exclusively be governed by the laws of the Netherlands. In so far as these general conditions do not provide otherwise, the applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG), concluded in Vienna in 1980 however, is expressly agreed on.
- 19.2 All disputes arising from our offers, statements and/or agreements shall be settled by the competent court in 's-Hertogenbosch in the Netherlands and ultimately the Dutch Supreme Court under the laws of the Netherlands.
- 19.3 We reserve the right, however, to submit a dispute for settlement to the competent court at the place where our Contracting Party has its registered office, or to submit the dispute for settlement to The Netherlands Arbitration Institute (NAI) in Rotterdam, under application of the procedural regulations of said Institute.

## 20. OTHER CONDITIONS

- 20.1 The nullity of any clause of these general conditions shall not bar the validity of any of its other clauses. Invalid clauses shall be replaced by new clauses which with respect to content, extent and purpose are as consistent as possible with said invalid clauses.
- 20.2 If we conclude an agreement with two or more parties jointly, each of these parties shall be jointly and severally liable for full performance of the joint parties' obligations under the agreement in question.
- 20.3 Our failure to require performance of (any clause of) any agreement we are party to within the term prescribed in such agreement shall not invalidate our right to require performance at a later date, unless we have explicitly agreed with noncompliance in writing.